

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO

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Case No. 34-2009-63714

JOAN BOICE, by and through her Successor-in-)
Interest, ERIC BOICE, and MYRON BOICE, ERIC)
BOICE, NANCEE BOICE, and MARK BOICE,)
individually,)

Plaintiffs,)

v.)

EMERITUS CORPORATION, EMERITUS SENIOR LIVING AT)
EMERALD HILLS, RHONDA CASTLEBERG, et al.,)

Defendants.)
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Videotaped Deposition of

SUSAN ROTELLA

Wednesday, August 29th, 2012

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Reported by CHERYL L. KYLE, CSR No. 7014

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PLAINTIFFS'

<u>EXHIBIT</u>	<u>PAGE</u>	<u>DESCRIPTION</u>
389	05	7-page notice of deposition of Susan Rotella.
390	05	2-page curriculum vitae resume of Ms. Rotella.
391	05	9-page series of documents Ms. Rotella received related to a 2/24/10 with DSS.
392	05	4-page 5/11/09 Noncompliance Conference Summary.
393	05	36-page personnel file of Ms. Rotella.
394	05	147-page compilation of documents Ms. Rotella received from Emeritus or prepared while employed at Emeritus.
395	05	84-page compilation of documents regarding the deficiency status and compliance status of Emeritus facilities in the West Region that Ms. Rotella brought responsive to request.
396	05	50-page Emeritus handbook of marketing, collateral materials, website copy, and other strategies to be executed during 2010 on behalf of Emeritus Senior Living that Ms. Rotella brought responsive to request.

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1 BE IT REMEMBERED that, pursuant to Notice, and
2 on Wednesday, the 29th day of August, 2012, commencing
3 at the hour of 10:29 a.m. thereof, at 2320 Marinship
4 Way, Sausalito, California, before me, CHERYL L. KYLE,
5 a Certified Shorthand Reporter in and for the County of
6 Sacramento, State of California, there personally
7 appeared

8
9 **SUSAN ROTELLA,**

10
11 called as a witness herein, who, being by me first duly
12 sworn, was thereupon examined and interrogated as
13 hereinafter set forth.

14 (Plaintiffs' Exhibits 389
15 through 396 were marked
16 for identification.)

17 --oOo--

18 THE VIDEOGRAPHER: We are on the record at
19 10:29 a.m. The date is August 29, 2012. Good morning,
20 my name is Erik Urias, and I'll be videotaping this
21 proceeding. I'm employed by Ronk and Company located
22 at 2600 X Street in Sacramento, California 95818. We
23 are located at 2320 Marinship Way, Sausalito,
24 California. We are here in the matter of Boice versus
25 Emeritus, et al. This will be the deposition of
Susan Rotella. The attorney noticing the deposition is

1 Lesley Clement for the plaintiffs. The court reporter
2 is Cheryl Kyle of Scribe Reporting.

3 Would all counsel please identify themselves,
4 the firm they are with, and who they represent.

5 MS. CLEMENT: Lesley Clement for the plaintiffs.

6 MS. BADAWIYA: Rima Badawiya for -- with Lewis,
7 Brisbois, Bisgaard and Smith for the defendants.

8 MR. WELCH: Michael Welch here representing the
9 witness, Susan Rotella.

10 THE VIDEOGRAPHER: The court reporter may swear
11 in the witness.

12 THE REPORTER: Please raise your right hand to
13 be sworn. Do you solemnly swear or affirm that the
14 testimony you are about to give in these proceedings
15 will be the truth, the whole truth, and nothing but the
16 truth?

17 THE WITNESS: I do.

18 EXAMINATION BY MS. CLEMENT

19 Q. Ms. Rotella, have you had your deposition taken
20 before?

21 A. Yes.

22 Q. Do you need me to go through the admonitions or
23 ground rules for taking a deposition?

24 A. Yes.

25 Q. Okay. So it's most important you understand my

1 question.

2 A. Okay.

3 Q. Your testimony here is under penalty of perjury,
4 and what that means there is actual criminal penalty, a
5 Penal Code associated with lying under oath. So you
6 want to make sure you understand my question or any
7 question that Ms. --

8 MS. BADAWIYA: Badawiya.

9 MS. CLEMENT: Badawiya. I have to write that
10 out phonetically. Tell me how to spell it.

11 MS. BADAWIYA: B-A-D-A-W-I-Y-A.

12 MR. WELCH: That's pretty phonetic.

13 MS. CLEMENT: That's exactly phonetic. Perfect,
14 it is.

15 Q. So if I ask questions or Ms. Badawiya asks
16 questions, you just need to make sure you understand
17 the question before you answer.

18 A. Okay.

19 Q. Also, it's very important that we not step on
20 each other's questions and answers, okay? So, for
21 example, it's very common in our normal conversations
22 with people, and we start talking and we know where our
23 colleague or our spouse is going or our kids, so we
24 just start answering. But in this setting we need to
25 make sure that we pause and wait. And that's important

1 for a couple of reasons. One, the court reporter can't
2 take us down at the same time. Two, we're videotaping,
3 so it makes a problem on the video. And, three, it
4 precludes the opportunity for counsel to object, which
5 they need to do to make a record for time of trial.

6 So your testimony today is just as though we
7 were in the courtroom. The only difference is we don't
8 have a judge here or the jury. But the judge is most
9 important for this reason: Is that he is going to rule
10 on any questions or answers. So he may say that
11 question is not proper or the answer wasn't responsive
12 or something like that. And because there's no judge
13 here, we have to make objections to preserve the record
14 for trial.

15 A. Okay.

16 Q. Now, the only time you don't answer the question
17 is, one, you don't understand it. Just tell us, I
18 don't understand the question, I don't understand what
19 you're asking me; two, if Mr. Welch instructs you not
20 to answer the question, then you don't answer it, okay?

21 A. Okay.

22 Q. But it's very confusing for witnesses because
23 most of the time witnesses think when the objection
24 happens, I'm not supposed to be answering. And they
25 look at me like, what do I do now. Well, what you

1 might want to do is ask the question be restated just
2 so you can hear it again. Because when the lawyers
3 start talking, you've kind of forgotten the question,
4 and so it's not a problem. Don't be embarrassed or
5 shy. Just tell me, and I'll rephrase it.

6 A. Okay.

7 Q. Cheryl is taking down everything we say. It's
8 very important that she hears us, so if anyone is
9 speaking too softly, she's going to kick me -- no, she
10 won't kick me, but she'll give me the eye. She'll also
11 give me the eye if I'm talking over you or vice versa
12 or anyone in the room is talking over, so we get in
13 trouble for that.

14 We take breaks from time to time. I tend to
15 drink a lot of water, so I tend to take a lot of
16 breaks. I would just ask if we are in the middle of
17 the question and answer, we finish that before we take
18 our break.

19 A. Okay.

20 Q. We will take a lunch break. We are ordering
21 sandwiches in.

22 Did you get your order in?

23 MS. BADAWIYA: I'm fine, thank you. I actually
24 stopped and got something ahead of time, so thanks.

25 MS. CLEMENT: Good idea.

1 Q. So we will have a lunch break, and then we will
2 complete and go and finish up.

3 So do you have any questions of me?

4 A. Not at this time, no. Thank you.

5 Q. So there will be a transcript of your deposition.
6 You'll be able to review it. You can make changes to
7 your answers, but not to the questions.

8 A. Okay.

9 Q. It's good to know that if you remember something
10 during the course of the deposition that's different,
11 it's a good time to let me know now.

12 A. Okay.

13 Q. And if you change something of a substantive
14 nature, from a yes to a no, that may affect your
15 credibility in front of the jury. So you need to
16 really take your time, you know.

17 A. Okay.

18 Q. Take your time, be thoughtful, and remember the
19 best you can today. Some of these things happened long
20 ago.

21 Okay. We've marked a number of exhibits, and I
22 would like to go through those with you.

23 So first is Exhibit 389, and did you receive
24 this subpoena for you to appear today for your
25 deposition?

1 A. I did.

2 Q. Okay. And in conjunction with the subpoena, did
3 you bring your current CV?

4 A. Yes.

5 Q. And is your current CV what we've marked as 390?

6 A. Yes.

7 Q. Okay. And then also we asked for documents that
8 you reviewed or authored during the course of your
9 duties as the vice-president of Operations of Emeritus
10 on a number of topics. And did you bring documents
11 responsive to those requests?

12 A. I did.

13 Q. Okay. Let's just go through them.

14 391, is this a series of documents that you
15 received during the course of your employment at
16 Emeritus?

17 A. That I received or that I wrote, yes.

18 Q. And are these documents related to a
19 February 24th, 2010 meeting in Southern California with
20 Department of Social Services -- I don't know if he was
21 a division chief or something along those lines,
22 Myron Taylor?

23 A. Some of them are.

24 Q. Okay. And are some related to a pre-meeting
25 that occurred that day?

1 A. Yes.

2 Q. And any other documents in that packet that are
3 either related to a pre-meeting or the meeting of
4 February 24th with the Department of Social Services?

5 A. Yes, there is -- shall I articulate what they
6 are?

7 Q. Yes, please.

8 A. There is a letter that I wrote to Chris Hyatt,
9 who is the senior -- well, at the time was the senior
10 vice-president of Operations, and he was recruiting for
11 vice-president of Operations for the California
12 Division. And this was the letter that I sent with my
13 resume in consideration for the position.

14 Q. And what date was that letter?

15 A. October 7th, 2009.

16 Q. Thank you.

17 A. The next two pages are -- is a diagram, as well
18 as a description of a concept called Collaborative Team
19 Management, CTM, that's used. It's integral to how
20 Emeritus has its functional teams work together.

21 The next document, actually two pages, is an
22 agenda for a kickoff meeting for one of my five
23 regions. This looks like it's Region Four's annual
24 kickoff meeting. So this was the agenda that the
25 regional director of Operations put together for that

1 meeting.

2 Q. And does that have a date on it?

3 A. January the 6th, 2010 and January 7th. The
4 dates of the event. I don't know when it was prepared.

5 Q. Thank you.

6 A. And the last document is an organizational chart
7 for the Western Division of Emeritus when -- it's dated
8 November 23rd, 2009. So this would have been when I
9 started.

10 Q. Okay. And you became the vice-president of
11 Operations for Emeritus for the California Division,
12 the West Division?

13 A. Yes.

14 Q. And what were your dates of employment?

15 A. I started -- I believe my start date was
16 November the 30th, 2009. And I believe my last day was
17 March the 5th, 2010.

18 Q. Thank you.

19 A. That's from my memory. I -- my recollection.

20 Q. Thank you.

21 And the next is Exhibit 392, and can you tell us
22 what that is?

23 A. This is a memo that's prepared by the California
24 Department of Social Services, DSS, and this is several
25 facilities -- I'm sorry, this is on the cover. It's

1 just a summary of the names of facilities that were at
2 the time in this region.

3 May I have a moment to kind of look at it?

4 Q. Please do. Take your time.

5 A. It's a review of Emeritus at Chatsworth, which
6 is in Southern California, Region Three, and it is a
7 summary of complaints and deficiencies noted by the
8 Department of Social Services.

9 Although it appears to have several communities,
10 it says on the top it's for Chatsworth, but if you read
11 the compliance conference was called to discuss the
12 following issues or deficiencies, they are referencing
13 several different communities, Chatsworth,
14 Villa Colima, Emeritus at Alhambra, Emeritus at
15 Casa Whittier, and Emeritus at Casa Glendale. I
16 believe all of these are in Region Three.

17 Q. What's the last one after Whittier?

18 A. Casa Glendale.

19 Q. And Region Three, who was the RDO for Region
20 Three?

21 A. Foremost of the time for the -- Evan Granucci
22 would have been the regional director of Operations at
23 the time of this meeting with DSS, and it looks like he
24 signed it.

25 Q. Does Exhibit 392, the Department of Social

1 Services document, does that have a plan of -- for
2 noncompliance for Chatsworth?

3 MS. BADAWIYA: Objection to the extent that the
4 document speaks for itself.

5 THE WITNESS: Could you repeat the question?
6 Sorry.

7 Q. BY MS. CLEMENT: Yes.

8 Does the Noncompliance Conference Summary for
9 Region Three that you're reviewing, does that have a
10 written plan by the Department of Social Services with
11 regard to the Chatsworth facility?

12 A. Yes. It appears on page three is a summary of
13 what the licensee agrees to do to bring the facility
14 into compliance, and the dates that they are required
15 to be completed by, and what will happen if they don't.

16 Q. Okay. And what was going to happen if they
17 didn't comply?

18 A. "Failure to complete the above
19 agreed-upon actions by the date will
20 result in the Department taking the
21 following actions, that the
22 Department at its discretion will
23 make unannounced case visits to
24 monitor compliance, and the
25 Department is not deprived of its

1 authority to take appropriate formal
2 legal action. And in the event
3 formal legal action is taken, nothing
4 in this plan precludes the Department
5 from precluding noncompliance issues
6 referred to in this noncompliance
7 meeting."

8 Q. Does the Noncompliance Conference Summary
9 indicate who from Emeritus was in attendance on the
10 first page?

11 A. Yes, the executive director of the Chatsworth
12 community, Murielle Dejesus; the regional director of
13 Quality Services, which was Genevieve Bautista, RN; the
14 regional director of Operations, Evan Granucci; the
15 senior vice-president of Quality and Risk Management,
16 Budgie Amparo; and the resident care director, this
17 would have been from the community, Rochelle Mangano.

18 Q. Thank you.

19 And was this a document that was provided to you
20 when you first started at Emeritus?

21 A. Yes, this would have been -- the date of the
22 conference was 5/2009. I hadn't yet started with the
23 company. By way of background, I probably received
24 this -- I'm just surmising here, that when I met with
25 my counterpart, as the head of Quality Services, I

1 would have discussed open compliance issues with the
2 Department of Social Services.

3 Q. And would that have been Lisa Hulse?

4 A. Yes.

5 Q. So Lisa Hulse would have provided you with the
6 Noncompliance Conference Summary that includes the
7 Chatsworth facility?

8 A. That's where I would have most likely have
9 received this from. We also did -- in preparation for
10 a meeting that we were having with the Department of
11 Social Services in February of 2010, we had a review of
12 all of the compliance issues that we had in Southern
13 California. So I may have also received this document
14 then.

15 Q. Okay. Great.

16 And now I'm going to show you Exhibit 393, and
17 this was produced to us yesterday by Emeritus, which
18 represented in a verified discovery response that this
19 was your personnel file. Take a minute to go through
20 it, and my question to you:

21 Does that appear to be the content of your
22 personnel file from Emeritus?

23 MR. WELCH: While she's looking, I may want to
24 state a technically, I guess, an objection, but I'm not
25 sure that she has knowledge of what was contained in

1 her personnel file, if she's seen it. So she may not
2 be able to verify those are the contents of it.

3 MS. CLEMENT: Okay. Thank you.

4 THE WITNESS: I can verify that each page is
5 about me, and many of them were forms that I completed
6 as part of my orientation and joining the company.

7 Q. BY MS. CLEMENT: Okay. Now, I'm going to hand
8 you what we've marked as 394. And these were some
9 documents that I received today from you.

10 Are these documents ones that you received from
11 Emeritus or prepared while employed as the
12 vice-president of Operations for Emeritus' California
13 Division?

14 A. Do you want me to go through every page?

15 Q. Well, if you need to.

16 A. Oh, okay. These certainly are pages that I do
17 recall presenting to you, yes. And they are ones that
18 either I prepared or I received or that I received in
19 the course of my employment.

20 Q. With Emeritus?

21 A. Yes. Sorry, yes.

22 Q. That's okay.

23 A. Lots of trees.

24 Q. Lots of trees, yes.

25 A. I'm just conscious of taking time. Do you want

1 me to?

2 Q. It's okay.

3 MR. WELCH: We're all here for you.

4 THE WITNESS: Oh boy, handbook. That's a lion's
5 share. These are all ones I would have given you. I
6 haven't seen them in a long time.

7 Q. BY MS. CLEMENT: That's all right.

8 A. I'm trying to remember what each of them was.
9 Okay. Yes.

10 Q. Okay. I'm going to show you now Exhibit 395.
11 Is this also a collection of documents that you
12 provided to us today in response to your subpoena?

13 A. Yes, these are.

14 Q. Okay. So Exhibit 395, are these primarily
15 documents regarding the deficiency status and
16 compliance status of Emeritus facilities in the West
17 Region?

18 A. Many of them, yes.

19 Q. Okay. And were these documents given --
20 provided to you by Emeritus?

21 A. Yes.

22 Q. And then in the back is there a color PowerPoint
23 presentation that Mr. Amparo put on with regard to the
24 Comprehensive Process Review and Emeritus' history as
25 it relates to regulatory compliance throughout

1 Emeritus?

2 A. Yes. This is a presentation I attended my first
3 week on the job during my week of orientation.

4 Q. And did I accurately describe what the CPR
5 presentation was by Mr. Amparo laying out the
6 Comprehensive Process Review system, as well as
7 Emeritus' history with the licensing agencies as it
8 relates to regulatory issues and internal event
9 tracking?

10 MS. BADAWIYA: I'm going to object. It lacks
11 foundation, calls for speculation, it assumes facts
12 that haven't been established, the document speaks for
13 itself.

14 THE WITNESS: I can answer?

15 MR. WELCH: You can answer.

16 Q. BY MS. CLEMENT: Yes.

17 A. Could you remind me of the question? Sorry.

18 Q. You attended the presentation Mr. Amparo did
19 with regard to the CPR in the first week of your
20 orientation that's part of Exhibit No. 395?

21 A. Uh-huh.

22 Q. Yes?

23 A. Yes.

24 Q. And did he provide you with a copy of the
25 PowerPoint?

1 A. Yes.

2 Q. And in that PowerPoint presentation, did he
3 outline the new Comprehensive Process Review that
4 Emeritus would be rolling out?

5 A. Yes. This was a presentation given to all of
6 the executives just to help us understand -- corporate
7 executives, so this was in Seattle. It was to help us
8 to all understand the current state of our regulatory
9 and penalties and deficiencies, and also the process of
10 CPR which was the process that had been in place, I
11 believe, but they were in improving, more comprehensive
12 process. So it was to help us to understand the forms.

13 Q. Okay. And did it --

14 Did Mr. Amparo also provide in his PowerPoint
15 presentation a historical background of how each of the
16 divisions within Emeritus had been performing as it
17 related to licensing issues, compliance, and
18 disciplinary actions?

19 A. Yes.

20 Q. Okay. Thank you.

21 And I'm going to show you what we've marked as
22 Exhibit 396. Can you tell me what this is and where
23 you got it?

24 A. I received this from Jayne Sallerson, who at the
25 time was the senior vice-president of Marketing. And

1 this was really a summary of all of the marketing,
2 collateral materials, branded materials, website copy
3 that her team had been working on and that were
4 getting --

5 (Proceedings interrupted by telephone.)

6 THE WITNESS: Pardon me. I'm sorry. That's me.

7 THE VIDEOGRAPHER: Going off the record at
8 11:00 a.m.

9 (Pause taken in proceedings.)

10 THE VIDEOGRAPHER: We are back on the record at
11 11:02 a.m.

12 Q. BY MS. CLEMENT: Can you tell me what Exhibit 396
13 is and how you obtained it?

14 A. I obtained this document from Jayne Sallerson,
15 who at the time was the senior vice-president of
16 Marketing. And this was a package that she prepared to
17 show me and I believe my peers all of the different
18 marketing, collateral materials, website copy, and
19 other strategies that were going to be executed during
20 2010 on behalf of Emeritus Senior Living.

21 Q. Okay. And when did you get Exhibit 396?

22 A. I believe that I received this in a special
23 one-on-one meeting first with Jayne Sallerson and her
24 team during my orientation. And then I believe that
25 this was also handed out in subsequent meetings with my

1 peers.

2 Q. And how long was your orientation after you had
3 accepted Emeritus' offer to hire you as the
4 vice-president of Operations for the West Division?

5 A. My orientation, my formal orientation, started
6 my first week on the job.

7 Q. And how -- where did that take place?

8 A. In the corporate office in Seattle, Washington.

9 Q. And how many days did you spend being oriented
10 to Emeritus when you first started with that company?

11 A. That orientation was five full days from 8:00 in
12 the morning until 6:00 at night, and then usually a
13 dinner in the evening with a different member of the
14 management team, including my boss.

15 Q. And who was your boss?

16 A. Christopher Hyatt.

17 Q. Okay. Thank you.

18 I'm going to hand you now your CV, Exhibit
19 No. 390, and ask you is this an accurate reflection of
20 your employment history and education?

21 A. It is an accurate summary. It's not completely
22 comprehensive. Since I have so many years, I couldn't
23 put every single job I've had at every employer.

24 Q. Okay. Well, I'd like to get to know about your
25 education, training, and employment that led up to you

1 becoming the vice-president of Operations at Emeritus.

2 And let's start with your education. If you
3 could tell me where you went to school, the year you
4 graduated, and the degree you obtained?

5 A. My undergraduate degree is a bachelor of
6 business administration in public accounting, and I
7 went -- attended the Hofstra University School of
8 Business in Hempstead, New York.

9 My graduate degree is a master's in business
10 administration from the University of Michigan in
11 Ann Arbor, Michigan. And, I'm sorry, the years that I
12 attended. I graduated from Hofstra University in 1979,
13 and I graduated from the University of Michigan in
14 1983.

15 Q. And before getting into the healthcare field,
16 what -- what was your job?

17 A. Primarily from -- well, after undergrad, I
18 was -- I worked for Arthur Andersen and was in public
19 accounting out of the Manhattan office.

20 Then after graduate school, I was a corporate
21 strategy major, and I focused most of my work career
22 prior to healthcare in the telecom industry and then
23 the technology industry. And my areas of expertise
24 were operations, marketing, and client services.

25 Q. And were you a certified public accountant?

1 A. I was a certified public accountant in New York
2 State.

3 Q. And can you tell us what does that mean,
4 "corporate strategy"?

5 A. Corporate strategy is a function that looked
6 forward to where the company should be going in order
7 to be most successful. So it looks at a long view of
8 the company, as well as the company within the industry
9 and all of its competitors, and it looks across all of
10 the functional areas.

11 So someone in corporate strategy is not a
12 specialist in one functional discipline. They look
13 across all of the functional areas and disciplines and
14 see how they work together. So it's really more of a
15 general business strategy as opposed to strictly one
16 discipline.

17 Q. And how many years were you working in
18 operations and marketing in the fields of technology
19 and telecommunications?

20 A. From my graduation in 1983 through 2002, when I
21 started in senior care.

22 Q. And what prompted you to go into senior care?
23 What was interesting about that area to you?

24 A. I had been through I think some fabulous
25 experiences in technology and telecom, a lot of changes

1 in the industry, a lot had gone on.

2 My most recent position had been in an Internet
3 company where I was an officer, and at the time I left
4 it was because the whole dot com, the technology bubble
5 was bursting. It was -- and my company was being
6 absorbed by Microsoft.

7 And so I had an opportunity then to reassess
8 where I wanted to go next. And given that technology
9 in the Bay Area was not a particularly lucrative field
10 at that particular time, I started thinking about,
11 well, I like change, I like what's new, I like
12 industries that are going through kind of turmoil, and
13 I looked at healthcare. And my primary thought when I
14 started looking at healthcare was to look at biotech,
15 to look at -- really to look at Medicare and look at
16 kind of what needed to change about that.

17 And in the process of going through
18 investigation, informational interviews, I came to be
19 aware of an opening at a company called Sunrise Senior
20 Living. And they were -- their advertisement was
21 asking for a vice-president of Operations for their
22 western division. And all of what they asked for in
23 terms of their job requirements were all business, no
24 healthcare requirement. And so I thought, well, this
25 is fascinating, huh.

1 I went onto their website, Sunrise Senior
2 Living, and I was just fascinated by what I had
3 learned. And I really like what they said and their
4 approach. I thought, well, let me at least do an
5 informational interview see if I'm of any interest to
6 them.

7 So I submitted my resume and immediately
8 received a phone call and was in the process of
9 formally interviewing for the job.

10 Q. And did you become the vice-president of
11 Operations for Sunrise Senior Living's West Division?

12 A. I did.

13 Q. And when was that?

14 A. That was in 2002. It was May.

15 Q. And did you undergo training with your job
16 position at Sunrise Senior Living to become an expert
17 in the field of senior living, assisted living?

18 A. Sunrise had extraordinarily extensive training
19 programs, and I was required to go through every bit of
20 training from what happened in every one of the
21 communities, each job title level, all the way through
22 all of the functions in corporate, as well as the
23 functions that I would be responsible for.

24 So I had to go through what Sunrise called their
25 Star Training program. I had to go through their

1 dementia care programing. I had to attend various
2 trainings with all of the functional heads in the
3 corporate office from regulatory, to legislative, to
4 financial, marketing.

5 Then I spent three months with my boss,
6 Cindy Musikantow, who was the senior vice-president of
7 Operations, on and off traveling with her to
8 communities and watching her model what was the Sunrise
9 practices.

10 Subsequently, there were plenty of additional
11 trainings that I had to attend for specific aspects of
12 my job.

13 Q. And in the course of your employment with --
14 strike that. When I say "strike that", it means I
15 wasn't asking a good question.

16 A. Okay.

17 Q. In your initial orientation period with Sunrise
18 in all of these trainings that you were attending, did
19 that include training in the standards that apply to
20 assisted living facilities in California including
21 Title 22?

22 A. Yes, but not in the training that I did at
23 Sunrise corporate. Well, the first thing I had to do
24 was read and become very familiar with Title 22.

25 Sunrise operated in almost all of the states.

1 So each state had very different regulatory
2 environments and requirements. So usually what they --
3 Sunrise did was they had attorneys in each state,
4 external attorneys, that were expert and knowledgeable
5 in the regulatory environment for each particular
6 state. And in California it was Hanson Bridgett.

7 And I worked very closely with the lawyer from
8 Hanson Bridgett first to understand the Title 22, to
9 understand the regulatory issues that were currently
10 open in my division for Sunrise and what was being done
11 about it, and understand the process because it was a
12 very new process for me, the whole process of the
13 audits, the licensing of new buildings, the interviews
14 that one has with the State, especially when one is
15 opening new buildings.

16 And I was going to be opening several new
17 buildings for Sunrise Senior Living, so I had to become
18 a licensee in the State of California on behalf of
19 Sunrise Senior Living, and so I had to go through extra
20 training with the State in Title 22 and had to be
21 extensively interviewed by the State licensing agents
22 to become qualified to be a licensee.

23 Q. As part of your responsibilities as a licensee
24 for Sunrise, were you responsible for knowing the
25 Title 22 regulations and other codes and regulations

1 that apply to the assisted living facilities in the
2 state?

3 A. Yes.

4 Q. And were you familiar with the requirement of
5 each of the assisted living facilities to submit a plan
6 of operation to the State in order to obtain its
7 license?

8 A. Yes, I actually had to do that.

9 Q. And was it your understanding that a plan of
10 operation that an assisted living facility submitted to
11 the Department of Social Services was its promise to
12 the State of what services that it would be providing?

13 MS. BADAWIYA: Calls for a legal conclusion, it
14 assumes facts, mischaracterizes the law.

15 THE WITNESS: Could you repeat the question?
16 I'm sorry.

17 Q. BY MS. CLEMENT: Yes.

18 Was it your understanding that a plan of
19 operation that an assisted living facility submit to
20 the State in order to get its license was in effect its
21 promise to the Department of Social Services of what
22 services it would be providing in the facility?

23 A. The word "promise", I guess, I'm having a little
24 struggle with.

25 It was our commitment that this is what we would

1 have in place for our residents, their families, our
2 employees. And that when they came to audit us, this
3 would be what was in place.

4 Q. Okay. Thank you.

5 And was it your understanding -- or strike that.

6 And you're still in the senior healthcare field
7 with your current position, correct?

8 A. I am.

9 Q. And have you been in the senior healthcare and
10 assisted living field for the past ten years?

11 A. Since 2002; however, I did have a
12 year-and-a-half time period after I left Sunrise where
13 I went back into technology to work for a company I had
14 been recruited to as a consultant.

15 Q. And did you keep abreast of the senior living
16 industry during the time that you were working with the
17 technology firm after -- immediately after you left
18 Emeritus?

19 A. No.

20 Q. Okay. Have you reacquainted yourself with the
21 senior living now that you are back in working in that
22 field again?

23 A. Yes, I rejoined the industry in the capacity,
24 similar capacity, vice-president of Operations and
25 Marketing, for a not-for-profit senior living company

1 called Northern California Presbyterian Homes and
2 Services in 2006.

3 Q. You can look on your CV.

4 A. Oh, sorry. Thank you.

5 Yes, 2006.

6 Q. And Northern California Presbyterian Homes, you
7 were a VP of Operations for that company, as well?

8 A. Yes, and Marketing.

9 Q. And is it your --

10 And then following Northern California
11 Presbyterian Homes, did you go to work for Emeritus?

12 A. After I left Northern California Presbyterian, I
13 was an independent consultant similar to what I'm doing
14 today. All of my clients were in the senior living
15 industry.

16 And during the time that I was consulting, I
17 became aware of the opportunity at Emeritus. And then
18 joined them after that process. But, yes, it was
19 continuous employment in senior living.

20 Q. And you're still employed in senior living
21 today?

22 A. Yes.

23 MS. BADAWIYA: Counsel, I'm sorry, can we go off
24 the record for just a second?

25 MS. CLEMENT: Yes.

1 THE VIDEOGRAPHER: Going off the record at
2 11:20 a.m.

3 (Break taken in proceedings.)

4 THE VIDEOGRAPHER: We are back on the record at
5 11:27 a.m.

6 Q. BY MS. CLEMENT: At Northern California
7 Presbyterian Homes, did you -- were you responsible for
8 operations and marketing of their Northern California
9 facilities?

10 A. Yes.

11 Q. And were you serving more than 2,000 residents?

12 A. It was approximately 2,000, yes.

13 Q. And Northern California Presbyterian Homes, was
14 that a company that in your tenure there had excellent
15 occupancy rates in its facilities?

16 A. Absolutely, they were -- with the exception of
17 San Francisco; although, their idea of excellent was
18 98; they were about a 94. But all of the other
19 facilities were always 100 percent of waiting lists or
20 close to it.

21 Q. And what did you attribute that to?

22 A. Well, there were a few things.

23 Three of the seven facilities were HUD
24 facilities so they always had a waiting list because
25 they were always -- there were always plenty of people

1 that wanted reduced-cost housing in San Francisco and
2 San Jose.

3 The three primary communities were life care
4 communities, so a very different model of senior living
5 than a rental model. And those models provided
6 lifetime care. That's why they called them life care
7 communities. They were a statutory product. The law
8 dictated basically how they operated from the
9 standpoint of what residents were entitled to and how
10 they paid.

11 So that was a model that started about 60 years
12 ago, and it was a model that was very -- very popular
13 especially for people that had money, that were good
14 planners, really before the long-term care insurance
15 market really took off.

16 And these were beautiful communities. They
17 started with independent living. You moved in when you
18 were independent, and you were promised care in
19 assisted living, memory care, and skilled nursing
20 during the course of your life. So you never had to
21 move out. You lived there. You knew you had care for
22 the rest of your life, and you moved in probably in
23 your seventies or eighties, and you had a new community
24 of friends that you would be spending the rest of your
25 life with.

1 Q. And those communities were licensed for both
2 assisted living, memory care, and skilled nursing?

3 A. Yes. They were RCFE for the assisted living and
4 memory care, and they were skilled nursing licensed
5 by -- and Medicare certified for the skilled.

6 So the Department of Health Services audited the
7 skilled, and DSS would audit the other neighborhoods.

8 Q. And those facilities had waiting lists?

9 A. The HUD communities had waiting lists. The life
10 care communities had -- at different points in time,
11 they had waiting lists usually for different types of
12 units because they had a -- you know, broad array of
13 different types of units.

14 In the, I would say, the '70s and '80s, they
15 always had 10-year waiting lists. And then the
16 explosion of other types of products and services came
17 to be, including some new life communities in
18 San Francisco, so all of a sudden we had a lot more
19 supply.

20 So they still were in the nineties in all of
21 their occupancy, but at this point in time they had to
22 start learning how to actually market. Instead of just
23 admitting, they had to learn how to market.

24 Q. And were you responsible for all aspects of the
25 operations of the Northern California Presbyterian

1 Homes that you managed?

2 A. I -- yes, I was responsible for all operations.
3 The functions of human resources was one of my peers.
4 She reported to my boss, but I was responsible for
5 everything other than finance, IT, and human resources.

6 Q. Okay. Let's move forward now to the time that
7 you go to Emeritus. And can you tell me who hired you
8 from Emeritus?

9 A. Christopher Hyatt, my supervisor.

10 Q. And did you learn from Mr. Hyatt -- or strike
11 that.

12 Did you have a telephone interview with
13 Mr. Hyatt or in person?

14 A. I had both. Initially I had a telephone
15 interview with the recruiter, the HR Department, and
16 then with Chris Hyatt, and then I was invited to come
17 up for an in-person interview with Chris and many of
18 his colleagues in headquarters.

19 Q. And who else in headquarters did you meet with?

20 A. I met with John Sincotta, who was the head of
21 Sales. I met with Jayne Sallerson, who was the head of
22 Marketing. I met with Budgie Amparo, who was the head
23 of Quality Services. I met with Melanie Werdel, who
24 was the head of Administration, which included HR and
25 licensing, regulatory, policy, and training. I met

1 with -- let me see. Let me have a moment to reflect on
2 that meeting.

3 I had an opportunity to meet Liberty Stansberry,
4 but I believe that she was -- who was the
5 vice-president of HR, but my recollection is that she
6 was running to some emergency meeting, so our meeting
7 was cut short. And I had lunch with Chris Hyatt, and
8 then I flew home that night -- so that afternoon. So I
9 believe that was everyone that I met with.

10 Q. And was that a positive experience, your
11 in-person interview with the senior team?

12 A. Absolutely, it really was. It really was.

13 Q. And following that interview in person with the
14 senior team, when did you hear from Emeritus again?

15 A. At the end of that day, Chris told me that he
16 would be circling back with the team, and he would get
17 back to me very quickly.

18 And, you know, I don't remember specifically.
19 It was absolutely within a couple of days, two to five
20 business days with an offer.

21 Q. And when you met -- or strike that.

22 Before the offer, had you been advised how long
23 the vice-president of Operations position had been open
24 in California?

25 A. Yes.

1 Q. And what was your understanding of how long that
2 position had been open?

3 A. It had been open for close to, I believe,
4 five months, and it had been open since they had
5 terminated the previous vice-president.

6 And in the interim they had one of the
7 vice-presidents of Operations from one of the other
8 divisions kind of looking over and managing both
9 divisions.

10 Q. And when you heard back -- was it from Chris
11 Hyatt?

12 A. Yes.

13 Q. And when you heard back from Chris Hyatt
14 following your day-long interviews with the senior
15 management, what did he tell you?

16 A. Chris is very effervescent, so he was just very
17 enthusiastic about -- told me that everyone loved me,
18 and I was unanimously selected, and they had never had
19 someone who had been unanimously selected, and that
20 they thought that I would be a great fit.

21 Q. During your in-person meeting with Mr. Hyatt
22 before the offer was made, did he ask you for any
23 commitments?

24 A. Yes. During lunch we just discussed my
25 background a little bit more, and it was a little bit

1 more of a kind of, I guess, a more freeform kind of
2 conversation.

3 And he said: I can tell that, you know, from
4 our conversations, the phone, in person, and also from
5 your resume, that you like a lot of challenge, and that
6 you really enjoy turnarounds, and that you don't
7 generally want to stay once the challenge is gone.

8 And I said: Yes, that's true, but I hope that
9 there is an opportunity to -- in an organization this
10 large, that there would be other challenges once this
11 challenge was met.

12 And he said he felt that there was a great deal
13 of opportunity, the company was growing. There was a
14 great opportunity for all different roles, but he
15 wanted a commitment from me that I would at least stay
16 in this position for two years.

17 Q. And the position being the vice-president of
18 Operations for California?

19 A. Yes.

20 Q. And did Mr. Hyatt or any of the senior
21 management tell you in those first days before the
22 offer was made that the West or California Division was
23 a troubled division?

24 A. Oh, yes. I knew from the phone call with
25 recruiting.

1 I knew from my phone call with Chris Hyatt
2 extensively. He was quite honest from the very
3 beginning that he had just been promoted, and that he
4 had specifically known that California was a very
5 troubled -- and he was very clear that "troubled" meant
6 they hadn't met any of their numbers -- division. And
7 that they really needed someone in that role who would
8 turn around that division, and that that was an
9 important part of the company's whole success was
10 getting California to be successful from a financial
11 standpoint because it was dragging down the results of
12 the company.

13 And so we spent quite a bit of time in the
14 interview process talking about my experience in
15 growing occupancy, and managing profit, and managing
16 staff. And so I was clear that in almost all of the
17 financial dimensions that this division was failing.

18 And actually I found that to be the challenge,
19 that was what made me interested in this job because I
20 had already done this job before. So what was -- and
21 when I was at Sunrise, my division was highly
22 successful. At the time I made it more successful, but
23 it was not as nearly in the shape that the one in
24 California -- that Emeritus was in, and it was bigger,
25 the Emeritus territory.

1 So I was excited by the opportunity to have a
2 larger territory to go in and to be able to turn around
3 a division that was so important to the company.

4 Q. Once you had received your offer from Emeritus,
5 what happened next in terms of your employment with the
6 company?

7 MS. BADAWIYA: It's overbroad, calls for a
8 narrative.

9 Q. BY MS. CLEMENT: After you received the offer
10 from Chris Hyatt, did you call and accept it?

11 A. He called me with a verbal offer, and we
12 discussed the different elements of the compensation.

13 And I verbally accepted, and then he sent me a
14 written offer.

15 Q. And what were the different elements of the
16 compensation?

17 A. A base salary, a bonus potential, stock options,
18 and a pretty generous benefit package.

19 Q. And do you recall what the bonus structure was
20 based on?

21 A. It was a percentage of my base, and it was
22 targeted to be approximately 30 percent, I believe, but
23 it could go as high as 36 based on some kickers, as I
24 recall. It was based on my ability to hit or exceed
25 certain financial metrics, primarily EBITDARM.

1 Q. And can you tell us what that means in words
2 that someone like I might understand?

3 A. Do you want me to say what EBITDARM means in
4 words first and then explain what?

5 Q. That would be great. Thanks.

6 A. The initials are earnings before interest,
7 taxes, amortization, depreciation, rent, and management
8 fees.

9 So basically I was responsible for delivering
10 earnings that I was in control of at the community,
11 regional, and divisional level. There were some things
12 that I wasn't in control of, say, overhead that was
13 applied or marketing expenses that we were allocated.
14 But for the most part it was revenue minus controllable
15 expenses equal profit. And that's what it was.

16 Q. And the revenue, would that be the money
17 collected from the residents?

18 A. Yes, several elements of categories of revenue,
19 yes.

20 Q. But ultimately would all of that revenue be
21 coming from the residents?

22 A. Yes.

23 Q. And controllable expenses, can you tell us in
24 general what that means?

25 A. Yes. These were the expenses that at the

1 community level were managed and also the general and
2 administrative expenses at my level that were
3 controllable over all of the -- across the division.

4 So at the community level, of course, the
5 biggest controllable expense is labor, and then there
6 were several other metrics that were incredibly
7 important for us to watch on the expense side, food,
8 Workers' Comp claims, bad debt. Bad debt was really --
9 it's an expense, but it's also a contra-revenue
10 account, so bad debt, making sure that we weren't
11 writing off monies that we had billed but could not
12 collect from people who had gotten the services.

13 Q. And what's the term "operating margin" mean?

14 A. Operating margin is net revenue minus
15 controllable expenses. So it's before -- it's referred
16 to sometimes as above the line; before you get to all
17 of those overhead expenses, corporate expenses, before
18 you get to things like interest, taxes, depreciation,
19 amortization, management fees, and leasehold, mortgage
20 expenses, things like that.

21 Q. What's the relationship between operating margin
22 and NOI?

23 A. It's pretty much the same to anyone other than
24 an accountant.

25 Q. Okay. And did Emeritus tell you what the

1 operating margin was they expected on the facilities?

2 A. Well, I managed a portfolio. So I managed to
3 kind of -- a portfolio operating margin.

4 Each community had a different operating margin
5 depending on its market issues, its competition, its
6 different levels of quality and other challenges. So
7 each community had an operating margin, but they would
8 roll up to the regional level, and they had a target,
9 and then it roll up to the divisional level. And as a
10 portfolio manager, I would be responsible for a certain
11 operating margin.

12 Q. And what was the operating margin for the West
13 Division portfolio?

14 A. We were still very much in the process of, when
15 I joined, looking -- relooking at all of the numbers
16 because they had done budgets for 2010, but I hadn't
17 been there yet. And we were -- they were also still
18 trying to get the numbers for the end of 2009
19 finalized, so they could set the numbers for 2010.

20 But, you know, I can't say that I remember
21 specifically what the operating margin number was. In
22 general in this industry it was around 30 percent, at
23 least at Sunrise that was a number I was well
24 acquainted with.

25 Because the Western Division at Emeritus, it was

1 so troubled, the focus at that point in time was
2 growing a percentage from where it was when I came
3 onboard.

4 So there was certainly metrics that the
5 corporate finance people gave to the investors and that
6 were discussed on investor calls. But at my particular
7 division, the focus was really on my ability to grow
8 the net operating income or EBITDARM about 15 to
9 20 percent higher than it was when I got it.

10 Q. Did you participate on investor calls?

11 A. No.

12 Q. Were you told what the corporate finance people
13 from Emeritus related as their metrics to the investors
14 during those calls?

15 A. Oh, of course. We -- the industry metrics are
16 fairly standard, and those were also the metrics that
17 we were bonused on, so we certainly knew what were
18 being discussed on the investor calls because those
19 were the ones that we were managing and reporting
20 almost in realtime to see where we were before the end
21 of a quarter, and certainly before the end of the year.

22 Q. And what were those metrics that Emeritus was
23 reporting on the investor calls?

24 A. Occupancy is a key metric for the industry and
25 certainly for Emeritus. Occupancy is measured in basis

1 points. It's often talked about, how many basis points
2 up or down. So occupancy, revenue per unit, and
3 revenue per unit is all of the different elements of
4 revenue that we collect in the company from residents
5 divided by the number of units that we have
6 operational. That's a very important metric because
7 what you want to see is that the revenue per unit
8 overall companywide is growing.

9 Obviously the financial statements that are
10 provided to the investors show all of the key line
11 items per cost, and they looked at each one of them,
12 but they looked at the bottom line most carefully to
13 see if the operating margin, the revenue minus the
14 expenses, if the margin was growing or shrinking.

15 Q. And --

16 A. And then they also looked at general and
17 administrative expenses overall for the company because
18 those are also, you know, a big deduction in getting to
19 earnings per share.

20 Q. And was Emeritus a publicly-traded company when
21 you started with them?

22 A. Yes.

23 Q. So the stock options that you were offered, that
24 was with Emeritus shares that were traded on the
25 New York Stock Exchange?

1 A. Yes.

2 Q. And as a VP of Operations, were you familiar
3 with Emeritus' debt covenants?

4 A. Yes.

5 Q. And can you tell us what is a debt covenant as
6 it relates to assisted living?

7 A. Debt covenants -- well, you have to understand
8 how the industry is organized around, who owns the real
9 estate and who runs the communities.

10 The real estate that -- or the communities are
11 primarily owned by real estate investment trusts, by
12 private equity firms, banks. Mostly they're owned by
13 real estate investment trusts and private equity firms.

14 If they're owned by the operating company such
15 as Emeritus in whole or part, they have mortgages. So
16 if there are mortgages, there are covenants that one
17 must meet in order to still be -- considered to be a
18 good credit risk for that debt. So there could be debt
19 covenants from banks that are mortgage holders on land
20 that we own as an operating company.

21 And then there are debt covenants -- although
22 sometimes I don't think they call them debt covenants.
23 They're operating covenants that the real estate
24 investment trust or the private equity firm would
25 provide to the operating company, in this case

1 Emeritus.

2 So they would say we own this real estate, we're
3 choosing you as the operator. We have a contract with
4 you to be the operator of services in our real estate.
5 You have an agreement to hit certain targets, that
6 you'll hit certain targets for occupancy, that you'll
7 hit certain targets for profit, and that those will
8 grow over time.

9 And they, real estate investment trusts and
10 private equity firms, get into this business in order
11 to grow those investments. And so they choose
12 operating companies they believe can maximize those
13 metrics in profits.

14 And they stipulate in those contracts certain
15 requirements that must be met. And if you meet them,
16 you keep your contract. If you don't meet them, you
17 are at a risk of both losing your contract or of
18 financial penalties.

19 Q. Are these debt covenants sometimes also called
20 performance covenants?

21 A. Yes.

22 Q. And on leased property, are they called lease
23 covenants?

24 A. Probably. Ask the asset management team.

25 Q. I did. That's what they told me.

1 But basically they're all performance
2 covenants --

3 A. Yes.

4 Q. -- that Emeritus has to meet these occupancy
5 targets and profit targets in order to either keep the
6 contract or not risk certain financial penalties?

7 MS. BADAWIYA: I'm just going to object. This
8 whole entire line of questioning calls for expert
9 opinion, it lacks foundation.

10 Go ahead.

11 THE WITNESS: I'm sorry. Was there a question?

12 Q. BY MS. CLEMENT: Yes, there was.

13 A. I'm sorry.

14 Q. In your tenure in the senior living industry and
15 your experience in accounting and finance, do you have
16 an understanding of what the performance covenants
17 required Emeritus to do?

18 MS. BADAWIYA: Same objections.

19 THE WITNESS: Yes, primarily -- not just because
20 of my background in finance, but as a VP of Operations
21 both at Sunrise more so but also at Emeritus, we
22 actually worked closely with asset management, and we
23 worked closely with the REITs and with the private
24 equity firms and the debt holders.

25 They actually reviewed and approved our budgets.

1 They would walk through my communities with me. I
2 would walk through and get approval for capital
3 investment from them. I often had to -- this was only
4 at Emeritus where I had a number, as we have discussed,
5 of troubled properties from a financial standpoint.

6 I was often in meetings, phone and in person,
7 with Asset Management, Scott Marshall primarily, where
8 I was told appropriately these are the challenging
9 properties from a covenant standpoint.

10 Sometimes they were not just where we were in
11 risk of losing or getting fined, but there was an
12 upside, as well. So at a property that may have been
13 purchased by a REIT that had very low occupancy, they
14 might and did offer us a fairly large financial upside
15 in a bonus in order to increase the occupancy beyond
16 the budget.

17 And we -- during the time that I was there,
18 there were at least one if not two properties that
19 actually hit those targets, and it was cause for great
20 celebration and joy because of the financial benefit
21 that Emeritus was able to reap.

22 Q. BY MS. CLEMENT: Following your receiving the
23 offer and accepting the offer from Emeritus' VPO, did
24 you have training with Emeritus immediately after
25 accepting the offer?

1 A. Immediately after accepting the offer, I was
2 invited to participate, prior to actually officially
3 starting, in a previously-scheduled two-day meeting
4 that Chris Hyatt in his new position was holding with
5 his direct reports, the other vice-presidents of
6 Operations of the other divisions. And so I was
7 invited to participate in a two-day meeting, even prior
8 to starting, and I was thrilled to be able to have that
9 opportunity prior to starting to actually meet all of
10 my peers.

11 Q. And was that meeting in Seattle?

12 A. Yes, it was.

13 Q. And what was the agenda for the two-day meeting
14 that Chris Hyatt held with all of the other
15 vice-presidents of Operations?

16 A. It was -- as you might imagine, it was a
17 combination of Chris' meeting establishing himself in
18 the role. He had been their peer, and now he was their
19 boss. So it was also an opportunity for the team to
20 bond together, so there were social see events, as
21 well.

22 But the focus of the two-day meeting -- and it
23 was a pretty packed agenda where we really focused
24 on -- it's kind of like a kickoff of the new year. It
25 was November; the new year was 2010.

1 So basically we had -- if I can remember, we had
2 several of the executives came in and talked to us
3 specifically about financial objectives and
4 requirements. Our two CEOs came in to talk to us. We
5 had the head of our training and HR organization,
6 Liberty Stansberry, come in and talk to us about
7 computerized or Internet-based training program they
8 were looking to bring onboard.

9 We had actually financial, wealth management
10 people that the company provided to come in and talk to
11 us all about helping us with our financials, helping us
12 to manage the stock options, to manage the deferred
13 comp plan, to understand what they called our Top Hat
14 Program.

15 Then we had Budgie Amparo came in and talked to
16 us about -- actually, strike that. I have -- I can't
17 remember at that meeting if Budgie was in town. So I
18 would have to refresh my memory looking at the agenda.

19 But I know that John Sincotta, who was the head
20 of Sales, came in and talked to us about how we could
21 partner together to obviously to drive sales in all of
22 the communities.

23 Jayne Sallerson came in with her -- a couple of
24 her key marketing people to talk to us about marketing.

25 We had a conversation about brain health, which

1 was one of the new initiatives that Chris Guay, who was
2 one of my peers, was bringing to the table for us to
3 discuss and to embrace as an organization across all of
4 our divisions.

5 We had the HR people come in and talk to us
6 about some of the HR plans and strategies.

7 Oh, I remember we had the finance people come in
8 and talk to us about bad debt and collection and a
9 system they called E-Pay that was being implemented.
10 E-Pay was where you offered people, residents the
11 opportunity instead of having to mail in or bring in
12 their check, to have it automatically deducted like we
13 might pay a mortgage. They could have their monthly
14 payments done electronically; again, all to, you know,
15 obviously reduce bad debt expense.

16 And I don't know that I have the agenda here in
17 that pile. So without refreshing my memory, that's my
18 best recollection of what we talked about in that
19 meeting.

20 Q. I think what we should do is just press on, and
21 when we have our lunch break, we can look through and
22 see if we can find the agenda.

23 A. Okay.

24 Q. Okay. This wealth management piece, was this
25 with regard to the operation of the facilities or

1 something for the --

2 A. No, it was personal wealth management. I
3 believe it was Morgan Stanley. So they were made
4 available to us to provide counsel on our personal
5 financial portfolios, our Top Hat Program, how to
6 execute stock option trades, that kind of thing.

7 Q. And what was the Top Hat Program?

8 A. Top Hat is Emeritus' deferred compensation
9 program for highly-compensated employees.

10 Because in any industry where you have a lot of
11 low paid employees or staff that you have a 401(k)
12 program, you are -- the IRS requires you to qualify.
13 And by qualify you can only put in a certain -- all
14 employees can only put in a certain amount of money
15 based upon the participation level of the whole company
16 employee base and how much they're making.

17 So in senior living frequently, because it's so
18 many employees are entry-level employees, low
19 compensation and low participation in the plans, we
20 would be limited in the amount of money that we could
21 put into our 401(k) program. So generally it was
22 somewhere between four or \$5,000 out of whatever the
23 IRS approved the maximum that year say 11 or 11.5.

24 So in order to compensate for the fact that we
25 could not put money into our 401(k)s at the full

1 amount, that, and to provide us extra financial
2 incentive, we were able to participate in a deferred
3 compensation plan, which basically allowed us to put a
4 pretty large amount of money, at our discretion, into a
5 pretax retirement plan in addition to the 401(k).

6 Q. And was the deferred compensation plan part of
7 Emeritus' incentive plan for the senior managers like
8 yourself?

9 A. It was part of our compensation plan. It
10 wasn't -- I don't believe it was incentive driven in
11 terms of the amount you got to put in, it was based
12 upon how well you did.

13 It was really you make this amount of money,
14 clearly you also make this amount in bonus. So the
15 more bonus you made, the more opportunity you could put
16 that money into the deferred comp plan and have it tax
17 deferred. But everyone got the same opportunity to
18 participate that were eligible to be in the Top Hat
19 Program.

20 Q. And were any of the line staff in the facilities
21 offered the Top Hat Program?

22 MS. BADAWIYA: Calls for speculation, lacks
23 foundation.

24 THE WITNESS: The people that were able to
25 participate, I believe, were vice-president level and

1 above.

2 Q. BY MS. CLEMENT: And the metrics for -- well, I
3 do want to try to use more simpler language.

4 "Metrics", what does that mean in the business
5 world?

6 A. Benchmarks, the targets, the category of targets
7 that one strives to meet.

8 Q. What were the targets that your bonus was based
9 upon at Emeritus?

10 A. It was primarily EBITDARM, that net operating
11 profit.

12 Q. Was there any aspect of Emeritus' bonus program
13 that you participated in that related to quality of
14 care the resident received?

15 A. No.

16 Q. During that first orientation that you went
17 through with Chris Hyatt and senior executives, did you
18 meet with Mr. Dan Baty and Granger Cobb?

19 A. Are you referring to the two-day meeting before
20 I started?

21 Q. Yes.

22 A. Yes, both of them came in separately to address
23 us.

24 Q. Did you have any communication personally with
25 Mr. Baty?

1 A. Yes.

2 Q. And what was your dialogue with Mr. Baty?

3 A. He came into the meeting. It was ongoing -- it
4 was in progress, and he came in. And Chris who was at
5 the head of the table, moved over to the side, and Dan
6 joined us in the front.

7 And so he looked around and -- Dan Baty and, you
8 know, said hi to everybody that he knew, and there were
9 a couple of people that he didn't know in the room, the
10 woman who was replacing Chris Hyatt in the position he
11 had just been promoted from and then me.

12 So Chris took the opportunity to introduce me as
13 the newest member of the team, and the person who was
14 going to be managing the California Division.

15 Q. And did Mr. Baty have a welcome remark for you?

16 A. Yes.

17 Q. And what did he say?

18 A. "Ah, so you're the one who is going to run the
19 shit hole."

20 MS. CLEMENT: We need to change tape.

21 THE VIDEOGRAPHER: This ends tape number one of
22 today's deposition. We're going off the record at
23 12:13 p.m.

24 (Lunch break taken in proceedings.)

25 MS. BADAWIYA: So I want to assert a belated

1 objection, and I would move to strike what the deponent
2 last said. It's hearsay, based on hearsay grounds.
3 That's it.

4 THE VIDEOGRAPHER: We are on the record at
5 12:45 p.m. The date is August 29th, 2012. This begins
6 tape number two of the deposition of Susan Rotella.

7 Q. BY MS. CLEMENT: In your two-day kickoff meeting
8 with -- led by Chris Hyatt and attended by several
9 executives, several senior executives, we were just
10 discussing, I want to go back through that a little
11 bit, okay?

12 A. Okay.

13 Q. Were there any challenges presented during that
14 meeting as it related to the division you would be
15 taking over?

16 MS. BADAWIYA: Calls for hearsay.

17 THE WITNESS: Any challenges presented as it
18 related to my division. By my boss?

19 Q. BY MS. CLEMENT: Yes. Let me rephrase.

20 A. Thank you.

21 Q. Did Mr. Hyatt or other senior executives raise
22 any specific challenges you would be facing in the West
23 Division at the two-day kickoff meeting?

24 MS. BADAWIYA: Calls for hearsay, assumes facts
25 not established, is leading.

1 THE WITNESS: We discussed in the meeting a
2 number of things related to the West Division. We
3 discussed some of the challenges in terms of staffing
4 in general, and we discussed some of the issues related
5 obviously to the metrics.

6 And in part we discussed it because the
7 gentleman who had been covering my division while I was
8 being recruited, Chris Belford, was in that meeting,
9 and it was an opportunity for him to not only share
10 with me, but to share with the rest of the group some
11 of the challenges in California, so we could all be on
12 the same page. It was a way of, you know, sharing
13 challenges. And each of us really had an opportunity
14 to share challenges that were in the respective
15 divisions that we felt was an area that we were going
16 to work on.

17 Q. BY MS. CLEMENT: And what were the challenges
18 that Chris Belford indicated he had experienced in the
19 West Division while they were recruiting you?

20 A. The major challenges in the West Division that
21 Chris talked about, we had some very weak management at
22 the regional level and at the executive director level.
23 We did not have a vice-president of Sales. That
24 position had been vacated about the same time I believe
25 as the vice-president of Operations. So that position

1 had been vacant so that was a big challenge that there
2 really wasn't a sales executive driving sales in the
3 West Division.

4 One of the really big challenges in the West
5 Division was the pricing, and the pricing was a
6 challenge because in the year or two prior, in order to
7 deal with a number of the competitor issues in the
8 markets that Emeritus had communities in California,
9 the vice-president of Operations, my predecessor, had
10 made a decision to bundle pricing, offer bundled
11 pricing. Which meant that when people came to view and
12 to our community, they generally are offered a suite,
13 and each suite that they select has a certain price,
14 and then they are separately charged for their care
15 charges based upon their level of care or acuity.

16 But in this case in all of the communities in
17 California, because many of the communities were
18 suffering from these competitive pressures by other
19 companies to offer bundled pricing, my predecessor
20 decided to offer bundled pricing. And bundled pricing
21 is a problem.

22 So we discussed in that meeting, staffing. We
23 discussed the lack of sales executive. We discussed
24 bundled pricing as being a huge issue. And we
25 discussed labor as being way over budget. I think

1 those are the major issues that were discussed in
2 California.

3 Q. Okay. And did you have any other training at
4 the corporate level in Seattle before you started your
5 job duties?

6 A. Yes. My first week on the job, as I mentioned
7 earlier, I had a one-week orientation at the corporate
8 headquarters for five full days and evenings. I was in
9 a conference room, and every 45 minutes another
10 executive came in from the headquarters and sat down
11 and told me about their organization and shared with me
12 documents that would be important for me to understand
13 about their functional area and/or about their work
14 within and with the California Division.

15 Q. During that five-day orientation in your first
16 official week of employment, did you learn anything
17 else about the West Division in terms of troubles that
18 it may have been having?

19 A. There were a number of things, and this wasn't
20 just for the West Division. But Workers' Comp was a
21 huge problem, Workers' Comp claims. And this was
22 discussed at length at that two-day meeting, as well,
23 earlier November. Workers' Comp claims for the company
24 were significantly in excess of past experience, and
25 also in excess of what had been budgeted, and so much

1 so that it showed up as a line item, a variance, big
2 variance that the investors had pulled out on an
3 earnings conference call.

4 So that was discussed really in great detail,
5 and we discussed the different ways that we were going
6 to work to reduce the Workers' Comp claims. So I spent
7 quite a bit of time with their safety -- their head of
8 safety. And so we sat and talked about the different
9 ways that we could reduce Workers' Comp claims. That
10 was one very important one.

11 We talked about bad debt was being a big issue
12 in California. I think bad debt was a big issue in
13 large measure because this was in the middle of, you
14 know, the great recession, and a lot of people were
15 slow paying or not paying, and that's in large measure
16 why E-Pay came to be. And so I spent quite a bit of
17 time with their director of Credit and Collections who
18 shared with me what they were doing in order to
19 facilitate improved collection rates and what I needed
20 to do to support him.

21 I spent quite a bit of time with Jayne Sallerson
22 talking about the bundled pricing. Jayne, as the head
23 of Marketing -- Jayne was really a numbers -- a really
24 good numbers person. She used to be in Operations, so
25 she really understood the pricing and knew what was

1 going on in California.

2 And she was also the one who was responsible
3 for -- it was a program called a Street Rate Editor,
4 and this was basically a pricing model. And so she
5 helped me to understand the Street Rate Editor program
6 and talked to me about the bundled pricing issue in
7 California specifically, and what she had done to try
8 to unbundle pricing working with Chris Belford and how
9 it still was maybe only 50 percent complete because the
10 folks in the field didn't really understand it, and
11 they were getting a lot of pushback to continue with
12 bundled pricing because of the competitive pressures.
13 So she was enlisting my support in helping to make sure
14 that we completely unbundled the pricing, separated
15 care charges from the rent charges.

16 Staffing was another issue. Each person that I
17 met with that was my boss's kind of peer at the time,
18 if you will, those that interacted with my direct
19 reports on a more regular basis, so not the finance
20 people but maybe the head of Sales or the head of
21 Marketing, Budgie Amparo, the head of Quality, they
22 gave me their take on my direct reports and to the
23 extent they thought they were strong or weak. And so
24 we spent quite a bit of time talking about the
25 strengths and challenges of some of my team and where I

1 might want to focus changing out some staffing.

2 I also had an opportunity to meet with
3 Liberty Stansberry. Liberty obviously shared with me
4 what they were doing in recruiting, and since
5 recruiting was such a huge problem because we had so
6 many vacancies in California, she shared with me what
7 her organization was doing to support California in
8 filling vacancies. This would be from within the
9 community to the regional level. So we talked quite a
10 bit about that.

11 She also shared with me any outstanding lawsuits
12 that were happening with employees, ones that I needed
13 to be aware of, employee suits.

14 One of the other nitpicky things was the
15 finance -- it's always the finance people. I met with
16 the controller. I think he was the controller or the
17 director or vice-president of Finance, and he was, as
18 accountants usually are, concerned that reports weren't
19 being generated on a timely basis, people weren't
20 getting the necessary approvals on purchase orders, and
21 that we weren't getting our accounts payable invoices
22 signed off and approved and in on a timely basis so
23 that we could benefit from the early-pay discounts that
24 Emeritus' Finance Department had signed up to benefit
25 from. And he was just thrilled that I was an

1 accountant.

2 Q. Do you remember the name of the gentleman that
3 you met with from Finance?

4 A. I could pick it out of a multiple choice
5 question easily, but for the life of me right now, his
6 name isn't coming to me. I can see him.

7 THE VIDEOGRAPHER: What's the next exhibit
8 number; 397?

9 MS. CLEMENT: Yes.

10 THE WITNESS: I believe there is an org chart in
11 one of the documents.

12 Q. BY MS. CLEMENT: Okay. Is it David Finden?

13 A. No.

14 Q. Stan Martin?

15 A. Stan Martin reported to this gentleman.

16 Q. Roffe?

17 A. No, Roffe is Finance. I can't believe I can't
18 remember him. He was like my biggest fan.

19 Q. Not Brandstrom?

20 A. No, he was the CFO. He reported to the CFO. He
21 was a peer of Roffe.

22 Q. It will come to us.

23 So following your one-week orientation after you
24 were first employed, what was next on your agenda as
25 the VPO?

1 A. After my first week, what had already been
2 scheduled for the second week, previously scheduled for
3 me by my boss and Chris Belford, who, again, was the
4 gentleman who was in charge of the Southwestern
5 Division, who had been overseeing my division until I
6 was hired, he had established a three-day kind of
7 orientation meeting for me with my team. And this was
8 in Anaheim and -- in a hotel in Anaheim.

9 And the first two days was for me to meet with
10 my regional direct reports, those that managed -- I
11 should say my functional direct reports, dining,
12 property, the nursing, HR. So I met with both my
13 regional functional direct reports, and then with all
14 of my regional directors of Operations.

15 And as part of that, we had two days of specific
16 presentations that were scheduled to be made to me by
17 the regional director of Operations and his or her
18 counterparts in the CTM model, so the regional director
19 of Sales, and the regional director of Quality Services
20 for each of the five regions.

21 So they -- each of these teams came in and
22 presented to me an overview of their region, of the
23 communities, of the financial health, of their
24 challenges, of their staffing in terms of quality and
25 issues related to that.

1 And then the third day, I was scheduled to go
2 and visit communities that were in the Anaheim area.
3 That was Region Four.

4 Q. So the first two days of your second week with
5 Emeritus, when you're meeting with the regional teams
6 from all five California divisions, did you have a
7 presentation from each region?

8 A. Yes.

9 Q. And did that include Region One?

10 A. Yes.

11 Q. And was it your understanding that Emerald Hills
12 was part of Region One?

13 A. Yes.

14 Q. And can you tell me in general what did you
15 learn from the two days of presentations by your
16 regional teams in terms of the challenges or trouble
17 that were going on in the California Division?

18 MS. BADAWIYA: Assumes facts, calls for hearsay,
19 lacks foundation.

20 MS. CLEMENT: I'll rephrase.

21 MS. BADAWIYA: Calls for a narrative.

22 MS. CLEMENT: I'll rephrase.

23 Q. What did you learn from the regional directors in
24 the California Division as to concerns that they had
25 about their regions?

1 A. The primary driving concern that started almost,
2 excuse me, each conversation was on the volume of
3 vacancies in positions that we had at basically every
4 level in the regions -- in the regional level, at the
5 divisional level. And then also the quality of some of
6 the -- or lack thereof of some of the talent that was
7 in positions that actually were full, so much so that
8 when my --

9 The first part of my two-day meeting was with
10 the regional functional people, as I mentioned, so the
11 HR people, and my counterpart, Lisa Hulse, in Quality
12 Services, the dining, the gentleman who was in charge
13 of property. So when I met with them first before the
14 five presentations of the regional directors -- and
15 also my finance person who -- Becky, who also reported
16 to me on a direct-line basis.

17 What I learned from that team was their feeling
18 about the challenges of the people in the field. Their
19 whole job was to be in the field and support them and
20 to make sure that the functions that they represented
21 were being properly executed in each of the
22 communities.

23 So they each, and having their first opportunity
24 to meet with me, shared with me what they felt their
25 challenges were. And a big part of their challenges

1 were the fact that there were so few people -- let me
2 rephrase that.

3 There were so many vacancies in very critical
4 positions at the community level and also that at the
5 regional triad level, the CTM level, that there were
6 some very weak players.

7 And in listening to them and in talking about
8 it, I immediately -- I had about 45 communities, and
9 each one of those 45 communities had an executive
10 director and five key department heads reporting to
11 them. So I was getting a little overwhelmed by, you
12 know, the names and titles and the this. I said, all
13 right.

14 I created a spreadsheet right there, which
15 director of dining was setting next to me kind of
16 mocked up, and it was all of the communities by region,
17 and the key job titles that were in each community at
18 the management level.

19 And so I asked for the regional people to rate
20 all of the executive directors and the key functional
21 department heads in each of the 45 communities. So I
22 had their assessment of what they believed were the
23 vacancies as well as the weak people and the strong
24 people.

25 So I just wanted to get a sense at a glance how

1 big the problem was with staffing, and this is
2 management staffing. So I could see which positions
3 were open, which people were weak, so I gave them an
4 "F" an "A", a "B", or a "C". So I asked them to give
5 me -- for each position that was full that wasn't
6 vacant for the person that was in it, let us -- give me
7 feedback about whether is this an "A" player, a star,
8 somebody that we could have mentor other people, this
9 is somebody that maybe we could even grow? Is this a
10 "B", a solid player? Is this a "C", like, you know,
11 may be brand new, might be a "C", but was still -- you
12 know, had a lot of development work to do, or "F", this
13 is a person that needs to go?

14 Just their assessment because I wanted to just
15 see at a glance how challenged this division was.
16 Because clearly in a people-driven business, the most
17 important thing is that you have staff in all
18 positions, and that you have good staff in all
19 positions, and that they know what they're doing. So
20 at this point I was really just addressing who's
21 filled, who's not in terms of job, and who is good, and
22 who's maybe not.

23 So we did that with the regional people. And
24 then when the teams came in, the five different teams,
25 and presented for their communities, I let them go

1 through their presentations where they talked about
2 their financials, where they are to date, how their
3 variance is against budget, what they're doing to, you
4 know, move themselves forward, what their challenges
5 are. This was kind of the model that each of them had
6 been given to come in and present to me.

7 And so I let them go through their respective
8 presentations, ask me any questions, talked about
9 myself a little bit, my style. And then I asked them
10 for their assessment of the people that were at each of
11 the communities to see if there was consistency between
12 what the regional functional people thought were
13 challenged employees and what the regional Operations,
14 Quality, and salespeople thought in the communities
15 were problems.

16 So it was a pretty -- and it took a lot of time,
17 as you can imagine. But to me it was really time well
18 spent because usually there's a correlation between
19 performance and whether you have people in jobs and
20 they actually are good, so.

21 Q. What was your takeaway from that -- those
22 meetings that you had with your division team and your
23 regional teams where you would do an assessment of the
24 vacancies, weak managers, strong managers across the
25 45 communities you were responsible for?

1 A. Are you talking about the regional teams, the
2 three teams, their feedback, or the functional people
3 or both?

4 Q. Both.

5 A. Oh, it was -- there was some difference of
6 opinion about specific people and whether they were
7 good or bad.

8 But on balance there was no disputing all of the
9 vacancies. That was a black and white issue. And the
10 extent to which at key positions in the communities I
11 had openings. And then the extent to which I had F
12 players, people that were evaluated by their bosses, as
13 well as their functional experts, as not being capable
14 for the position that they were currently occupying.

15 That was my biggest -- I already knew the
16 numbers in terms of, you know, when each one of them
17 came in and presented here is my results, here's my
18 variance. I already knew that from all of the
19 financial reports I had from corporate and poured over
20 the week before.

21 I had a dashboard from my boss that we all used,
22 it had all of our divisions across the top, and all of
23 the metrics over the side, and the numbers were all
24 filled in. It was a nice, you know, pictorial
25 representation of how we were doing. And around all

1 the ones that were good, there was a green. And around
2 all of the ones that were bad, there was a red or a
3 pink.

4 If you looked at the West Division, the entire
5 thing was pink or red, every metric. So I had already
6 seen that. So, you know, seeing how, you know, it got
7 divvied up by division, I also had seen in other
8 reports, but hearing them and hearing about why they
9 thought they were challenges, and why they thought
10 those numbers were off was another -- you know, that
11 was the eye-opening part.

12 MS. CLEMENT: Why don't we take a coffee break?

13 THE VIDEOGRAPHER: Going off the record at
14 1:12 p.m.

15 (Break taken in proceedings.)

16 THE VIDEOGRAPHER: We are on the record at
17 1:17 p.m.

18 Q. BY MS. CLEMENT: So in your second week, the
19 two-day visit with the regional team -- teams, and you
20 were telling me what the primary concern was. And you
21 said the number one concern was the volume of
22 vacancies; is that right?

23 A. Yes, and the lack of candidates to fill them.
24 They were challenged in just generating enough
25 candidates to interview to fill them, response or lack

1 thereof to their postings and ads in papers.

2 Q. And did you in the course of your position --
3 strike that.

4 In the course of your tenure at Emeritus, did
5 you review those postings to see what the potential
6 problems were that were leading to a lack of candidates
7 to fill the positions?

8 A. I spent quite a bit of time on recruiting, and
9 there were a number of things that were less than
10 optimum just about the way they did recruiting.

11 And so I was able to partner with
12 Liberty Stansberry's recruiting team at corporate and
13 get some dedicated resources to help us to get both
14 external recruiting support, internal recruiting
15 support to both review and assess and identify the best
16 of resumes we were getting. So people weren't drowning
17 just in the sheer volumes of unqualified people that we
18 were getting resumes from.

19 So to go to both secure additional resources,
20 not just by posting things online and getting things
21 back, but also using recruiters to go out to
22 competitors and get people that we knew were good. So
23 instead of waiting for people that, for whatever
24 reason, came to us, we were proactively looking for
25 people.

1 And I actually spent a lot of time at recruiting
2 people, giving them the names of people I wanted them
3 to go talk to, from my experience of people I thought
4 were really good. And I spent quite a bit of time
5 meeting, specifically calling and asking folks that had
6 worked for me before, if they might be interested in
7 talking to me about positions.

8 I implemented a referral bonus so that all of
9 our staff who had people that they thought would be
10 really good in their communities that they wanted to
11 work with that they thought would be good. If we hired
12 them, we gave them a referral bonus of I think it was
13 \$1,000.

14 And then I had a wonderful woman at corporate in
15 Recruiting do a lot of the prescreening interviews for
16 us. So as part of this, one of the things that I had
17 my HR person do, who reported to me, Audrey Withers, I
18 had her weekly create a report that would summarize all
19 of my outstanding positions by -- at a macro level, at
20 a functional job title level, and then at a community
21 level. So she managed that. She worked very closely
22 with the recruiting people in corporate because she was
23 dotted line part of the HR team, and we slowly but, you
24 know, surely cranked a lot of the most critical
25 positions into filling those.

1 And I was also able to bring several people in
2 that I knew as VP of Sales candidates, and eventually
3 Emeritus hired someone who used to report to me at
4 Sunrise as the vice-president of Sales.

5 And I actually also brought someone who reported
6 to me at Sunrise as a vice -- he was a director of
7 Operations at the time, and I brought him in. Actually
8 I was talking to him and offering him the position
9 in -- as one of my regional people the week that I was
10 terminated, and he actually did come on to the company.

11 Q. Audrey Withers, these weekly reports that she
12 was getting for you, were those showing vacancies and
13 open positions at the community level for the director
14 positions?

15 A. It was executive directors, and then all of the
16 direct reports to an executive director, so the head of
17 nursing, the head of dining, the head of sales, the
18 business operations manager, the activities manager,
19 the memory care director.

20 Q. And then in addition to getting weekly reports
21 on vacancies for the director and department head
22 positions at the community level, were you also getting
23 reports weekly from Audrey Withers on the vacancies you
24 had at a regional level?

25 A. Absolutely, yes, although I had many fewer of

1 those.

2 Q. Okay. So volume of vacancies was -- and lack of
3 candidates to fill the position were two of the top
4 concerns that came out of that second week of your
5 employment. What other concerns were raised by the
6 Emeritus regional and divisional reports that you heard
7 in those first two days?

8 A. Well, it was a very different, as you would
9 imagine, set of issues that the functional people
10 brought up than the people that were actually running
11 the community operations.

12 So the primary issues that the regional director
13 of Operations, the regional director of Quality
14 Services, and the regional director of Sales, those
15 three people for each one of the five divisions, after
16 talking about the vacancies and the quality of the
17 staff that they had, each one of them had different
18 issues.

19 So I'll start with, say, Sales the easiest one.
20 Of course, the salespeople didn't have a boss. There
21 was no VPQS -- I'm sorry, VP of Sales at the time, so
22 they felt they were a bit floundering because they
23 didn't have a good direction.

24 They also felt that their targets -- of course,
25 everybody always thinks their sales targets are high,

1 and they were because the targets were set with what
2 they needed to be hitting -- and a number of these
3 communities were at 55, 65, 70 percent. And, of
4 course, we know the targets are closer to the
5 90 percent level.

6 Q. When you say "targets", do you mean the targets
7 the facilities are to hit with regard to percentage of
8 occupancy?

9 A. Yes, I'm sorry. Yes, the occupancy level
10 because the salesperson and the executive director
11 were, of course, the most important to move in, to
12 bringing in and filling open suites.

13 So there was a lot of concern on the
14 salespeople's part that they couldn't make enough money
15 because their targets were too high. So targets, high;
16 commissions, weren't making enough; they didn't have a
17 boss; their salespeople were not always the strongest
18 people. They turned over regularly. And that, of
19 course, they always felt that we weren't able to keep
20 people or we weren't able to compete with competitors
21 on pricing the way they would like to be able to
22 compete. So they felt there were a lot of challenges
23 to their being able to occupy their buildings.

24 Q. When you say retain or keep people, do you mean
25 the residents or staff?

1 A. No, in that case on the Sales side, because they
2 are compensated -- they have, of course, a move-in
3 bonus but they also have an occupancy level target, so
4 it's important to them that the back door is always
5 managed so that people aren't leaving for whatever
6 reason.

7 So occupancy is a function of who's moving in
8 and who's moving out. And so the salespeople always
9 felt like they would find candidates, and sometimes the
10 nursing people would veto that person from moving in.
11 Or that we couldn't compete with the prices, the
12 rock-bottom price that was maybe down the street. So
13 the salespeople are always: These are all of the
14 reasons why I can't make my numbers. So, of course, I
15 heard from each of them why their teams weren't making
16 the numbers.

17 Then on the Operations side, the people that
18 were my direct reports, who kind of looked across
19 everything, they were the team leader, if you will, of
20 the CTM team, their big issues were, of course, that
21 revenue was obviously suffering, but we just talked
22 about revenue, so I'll talk to you about expenses.

23 And so obviously the biggest expense in a
24 community is labor. And their challenges were a little
25 bit different in that, you know, they had all of these

1 vacancies, but still they were constantly being told to
2 cut labor expense, cut labor, cut labor, cut labor,
3 especially in a community that wasn't meeting its
4 bottom-line number.

5 So there was a lot of frustration around just
6 these kinds of directions from corporate that said cut
7 labor by 10 percent, and there were a number of those
8 directives that had come out from Chris Belford before
9 I had gotten there. So there was a lot of questions
10 about that, and how they came up with this 10 percent,
11 and how do we know that's the right amount. And we're
12 already bare bones, how can we get any more, we don't
13 even have our open positions filled. So that's what
14 Operations spent a lot of time on.

15 And then, of course, the fact that they had all
16 of these reports to do, all of these invoices to
17 approve. They had so much administrative work that
18 they had no time to leave their desks. So they worked
19 out of home offices. Like twice a week, two out of
20 five days, they have like almost full-time telephone
21 calls for the full day just on regularly-scheduled
22 conference calls to review sales, to review operations.
23 So --

24 And then while they had time in their home
25 offices, they were supposed to get all of these other

1 administrative tasks done, including the Ethics First.
2 They have to -- it was an online system that we had for
3 family members, for employees, for anyone, even
4 residents to file a complaint or compliment or
5 whatever, was just to communicate. And so when
6 those -- all of those volumes of communiques came in,
7 they would go through kind of a filter in corporate,
8 and then they would have to be responded to by the
9 people in the field.

10 Well, of course, you know, it usually went to
11 the regional person first, and then down to the
12 community. So they had a time frame they were supposed
13 to respond to those. And so, you know, they're always
14 constantly trying to get responses out, and it's hard
15 to move away from your desk and get out into the field
16 when you have so much administrative work and so many
17 conference calls.

18 So that was a huge issue for them is: I don't
19 have enough time to be in the communities. I don't
20 have enough time to be supporting and coaching and
21 training my executive directors. I don't have enough
22 time to even interview new people. So that was kind of
23 a big part of the operations.

24 Then you get to the Quality Services people, the
25 nurses. And the nurses were -- they had another whole

1 set of concerns because the nurses are responsible at
2 the regional level and at the community level for
3 managing the back door. So what that means is anybody
4 who's moving out on any sales call at all levels,
5 whether it's sales calls at the community level, at the
6 regional level, at the divisional level, we review
7 every single move-out.

8 Move-ins, you're happy, yea, okay. Why isn't
9 this number bigger? That's what you focus on. And
10 what's your pipelines?

11 But on the move-outs, both on the already moved
12 out and that are pending move-outs, we spent a huge
13 amount of time, and this was part of our -- this was
14 the company's, you know, plan. This is what you're
15 supposed to focus on on the calls. We were told what
16 to focus on, why moves out, so what are the move-outs.

17 So, of course, there is death. Okay. That is
18 acceptable, considered an acceptable move-out. And
19 then there's, you know, a person who left for
20 competitive reasons, they got a cheaper price someplace
21 else. So those were, of course, always scrutinized
22 heavily and everything that they could have done or did
23 do to prevent that move-out was discussed.

24 And then if they moved out because they were
25 unsatisfied, of course, you know, that was a very deep

1 discussion, and we tried to do everything we could if
2 they hadn't moved out to turn that situation around.

3 And then the one that took -- had the most, I
4 think, energy around it in the team was move-outs
5 because they were at a level of acuity they could no
6 longer handle. And there are some things that are
7 black and white that you cannot handle in assisted
8 living. And if somebody gets to a point, a resident,
9 where that condition is one that -- or their need
10 requires something that we're not licensed to provide,
11 that's kind of a black and white, they've got to move
12 out.

13 And then there's, you know, other ones where the
14 person's need may be so extensive that, you know,
15 there's just more gray area around whether we can
16 provide for that person. And so if that person was
17 moving out, that was not a black-and-white issue but a
18 more gray issue, there was a lot of discussion about
19 what have we done, what can we do to support this
20 person in that environment.

21 And there was always a lot of, you know, as you
22 would imagine, contention between the salespeople who
23 didn't want to lose that person, and the nursing people
24 who were saying this is my license, I can't have those
25 people in here, and the executive director who is

1 going, my bonus is based on my bottom line. So, you
2 know, those calls were always contentious at every
3 single level. So those were the issues that we
4 primarily discussed as being the challenges.

5 The other issue that QS certainly brought up was
6 the fact that they had a horrible time getting nurses
7 and keeping nurses. We didn't pay enough. Nurses
8 obviously are in short supply, especially in
9 California. They command a pretty high premium. So we
10 had a hard time recruiting nurses. We had a hard time,
11 even harder time keeping nurses.

12 And then when the nurses weren't in a building,
13 the regional director of Quality Services often had to
14 sit in that building. If there was only one in their
15 region that didn't have a nurse, they would have to sit
16 there instead of being in their home office or out on
17 the road to be that job. So, of course, they were not
18 happy to be in that kind of a role because then they
19 couldn't do the RDO -- the RDQS job; they were doing
20 the nursing job in the community.

21 And then, of course, for those communities that
22 had a licensing or regulatory issue, which I had
23 learned about already from Lisa Hulse, I would hear
24 about it from the regional team of -- that managed that
25 community.

1 Q. "Managing the back door," I've also heard that
2 phrase, "Close the back door," is that a phrase that
3 means doing everything you can to prevent the resident
4 from moving out?

5 A. Yes.

6 Q. And the black-and-white areas that you
7 understood Emeritus was not supposed to be keeping
8 residents, was that when residents were -- include
9 residents that were bedridden?

10 A. If they were bedridden, you had to get a waiver.

11 Q. And did you have to get that waiver from the
12 Department of Social Services?

13 A. Yes, it's a licensing analyst.

14 MS. BADAWIYA: I'm just going to make a belated
15 objection as to the fact it calls for a legal
16 conclusion and is vague as to time with respect to the
17 Department of Social Services regulations.

18 THE WITNESS: It's true, they did change their
19 bedridden regulations over the course of the last five,
20 ten years.

21 Q. BY MS. CLEMENT: During the time you were at
22 Emeritus, was it your understanding that a resident was
23 deemed bedridden if they needed the assistance of one
24 or more persons to get them in or out of bed?

25 MS. BADAWIYA: Object, it's vague, it calls for

1 a legal conclusion, it assumes facts that haven't been
2 established, it's beyond the scope of this witness'
3 expertise.

4 THE WITNESS: Yes.

5 Q. BY MS. CLEMENT: And you knew that definition of
6 bedridden because you were required in your position as
7 vice-president of Operations over the years that you
8 had worked in this field to know that Title 22
9 regulations as it applied to the residents you could
10 accept or retain?

11 A. Absolutely, yes.

12 Q. And with regard to other black-and-white issues
13 where Emeritus could not continue to keep a resident,
14 was it your understanding that residents who were
15 dependent in all of their activities of daily living
16 were residents that needed to be moved out?

17 A. Unless they were on hospice, which I also had to
18 have waivers for. You could only have a certain number
19 of hospice waivers in the community.

20 Q. And you also needed a physician's order,
21 correct?

22 A. Yes.

23 Q. And was it also your understanding that if
24 residents had either nonhealing pressure ulcers or
25 pressure ulcers that were Stage III or IV, they could

1 not be accepted or retained?

2 A. Yes, Stage III or IV they had to be moved to
3 skilled nursing.

4 Q. And was it your understanding as the
5 vice-president of Operations that it was Emeritus'
6 responsibility to move the resident out if they had one
7 of these black-and-white conditions which related to
8 their acuity?

9 MS. BADAWIYA: Lacks foundation, it's overbroad,
10 it's vague, calls for a legal conclusion.

11 Q. BY MS. CLEMENT: I'll rephrase it.

12 A. An RCFE operator, any RCFE operator would have
13 to move out a resident who did not meet the standards
14 set forth for an RCFE community to accept or retain a
15 resident.

16 Q. So the responsibility, to your understanding,
17 would always be the licensee's responsibility to move
18 the resident out as opposed to the family or the
19 physician?

20 A. Absolutely.

21 Sorry, I was just remembering episodes.

22 Q. Was it your understanding in the first weeks
23 that you were at Emeritus that one of Emeritus'
24 marketing features to attract residents and their
25 families was the use of a nurse in their buildings?

1 MS. BADAWIYA: Object, it lacks foundation,
2 calls for speculation, assumes facts that haven't been
3 established, and is vague.

4 THE WITNESS: Yes.

5 Q. BY MS. CLEMENT: And what was your understanding
6 as to why having in your marketing material a nurse
7 working in the facility was -- it helped to improve
8 sales?

9 MS. BADAWIYA: Same objections.

10 THE WITNESS: Because every family member of a
11 resident or prospective resident would always feel more
12 comfortable knowing that there was a trained licensed
13 person in the building should anything happen,
14 regardless of what community or which provider it was.

15 MS. BADAWIYA: When you say regardless of which
16 provider it was, what do you mean by that?

17 MS. CLEMENT: I'm sorry, do you want to wait
18 until your turn to ask questions?

19 MS. BADAWIYA: No, I don't. I want to clarify
20 so I don't have to go back. If you could quickly --

21 THE WITNESS: I just meant in assisted living,
22 whether it was a Sunrise, or Belmont Village, or
23 Emeritus a nurse would always be of value in a
24 community.

25 MS. BADAWIYA: Thank you.

1 Q. BY MS. CLEMENT: And from a marketing perspective
2 was -- strike that.

3 Was it your understanding from your meetings
4 with Jayne Sallerson and John Sincotta that one of
5 Emeritus' marketing features was that they had a nurse
6 in all of their buildings?

7 MS. BADAWIYA: I'm going to object that it lacks
8 foundation, calls for hearsay, assumes facts that
9 haven't been established.

10 THE WITNESS: I never spoke to them about the
11 issue of a nurse being in a building because Emeritus,
12 as well as the company that I had come from, had nurses
13 in the building. So it wasn't, you know, something
14 that was novel to me. It was something that was just,
15 yeah, of course you do.

16 Q. BY MS. CLEMENT: Were you surprised in your
17 second week at Emeritus to learn how many open
18 positions there were in the 45 communities as it
19 related to the nursing staff?

20 A. Yes and no.

21 MS. BADAWIYA: Lacks foundation, calls for
22 speculation, assumes facts that haven't been
23 established.

24 I would ask, Ms. Rotella, if you don't just --
25 just to pause for a minute so I can assert an

1 objection. You're doing a fantastic job. So thank
2 you, if your counsel has no problem.

3 THE WITNESS: I'm sorry, what was the question?
4 I'm sorry.

5 Q. BY MS. CLEMENT: Were you surprised at the number
6 of openings in the nursing positions within the
7 45 communities?

8 A. Oh, yes and no.

9 Q. What --

10 A. Yes -- I'm sorry.

11 Q. And what do you mean by that?

12 A. Yes, because there were a number of them, and
13 there were a number of them in each region.

14 And the no because I know how difficult it is to
15 get nurses in California.

16 Q. And had you had prior experience in reducing
17 turnover from the nursing position in the companies
18 that you had operated in senior living?

19 A. Yes.

20 Q. And what did you do in other positions to reduce
21 turnover in the nursing positions?

22 MS. BADAWIYA: It's vague.

23 THE WITNESS: A primary one was we raised -- we
24 raised their base pay.

25 Q. BY MS. CLEMENT: Any other methods that you had

1 found to be effective in your other positions operating
2 senior living communities to reduce nurse turnover?

3 A. I would say prior to Emeritus I had a very
4 similar experience with a company like Sunrise Senior
5 Living. From a model standpoint, they were both
6 for-profit assisted living, memory care.

7 In that environment I also struggled with
8 nurses. And when I took over that division, I had to
9 increase a lot of base salaries across jobs because I
10 think a company that was headquartered in Virginia
11 didn't quite realize what the cost of living was and
12 the competitive environment for talent. So nursing
13 being the prime most competitive one, I raised prices,
14 raised the base salaries for them.

15 In my Northern California Presbyterian
16 experience, I had no trouble getting nurses for very
17 different -- they were very well paid. They had great
18 benefits. They had great working conditions, and they
19 had retirement plans. I had a different trouble there.
20 I couldn't get rid of ones that were not good.

21 In Sunrise, the other thing that we did, which
22 we didn't have at Emeritus, was on weekends we had a
23 weekend-hour nurse. We had the Monday to Friday
24 40-hour-a-week nurse, and then on weekends we had a
25 budget for four hours on Saturday and four hours on

1 Sunday for part-time nurses. And what they did was a
2 lot of the administrative work, paperwork, that -- did
3 a lot of assessments on weekends so that on Monday
4 morning when the nurse showed up they weren't already
5 buried. So that was a huge -- that was a huge benefit.

6 Because many of the nurses that come into this
7 industry, come in either brand new to their job out of
8 school or they're at the end of their career, and
9 they're looking either for experience if they're brand
10 new or if they're toward the end of their career,
11 they're tired of working in acute care setting, and
12 they think it's going to be just lovely working in a
13 senior living community, and that it will be kind of a
14 cakewalk compared to where they were. And then the
15 reality is, they get in and it's not. And so there's a
16 cultural kind of shock, and then they realize, oh, my
17 God, I just took this big cut in pay to come into this
18 environment, and it's not what I thought it was going
19 to be.

20 So that was why we would lose a lot of people
21 that we actually got to accept the low salary in the
22 first place. But a huge problem at Emeritus with
23 nurses versus at Sunrise was that we had this weekend
24 nurse budget that we were able to support the nurse who
25 was there Monday to Friday with a great deal of their

1 administrative work.

2 Q. So at Sunrise, you had a weekend nurse --
3 weekend nurses, but at Emeritus you did not?

4 A. Correct.

5 Q. So one of the ways that you improved the working
6 conditions for your -- to retain and attract nurses at
7 Sunrise was to provide weekend coverage at each of the
8 facilities?

9 A. I didn't do that. That was already budgeted.

10 Q. Okay.

11 A. That was standard.

12 Q. Were you surprised to learn that Emeritus did
13 not have any coverage on the weekends in the nursing
14 department?

15 MS. BADAWIYA: It assumes facts, it's
16 argumentative as phrased, lacks foundation.

17 MS. CLEMENT: Let me lay a foundation.

18 Q. Did you learn during the first two weeks of your
19 employment that Emeritus did not have weekend part-time
20 nurses or some other coverage on the weekends for the
21 nursing position?

22 A. I heard that because many of the employees that
23 we had at Emeritus came from Sunrise, so there was
24 always a comparison.

25 Q. And was that surprising to you that the Emeritus

1 facilities did not have nurses working on the weekend?

2 A. You know, to be honest, I don't remember. I
3 don't even really remember having enough time for that
4 to register in the short time that I was there.

5 Q. So moving on to the third day of the second week
6 when you went out to visit the communities, what was
7 the purpose of that part of your new job duties?

8 A. Well, those were the first communities that I
9 was going to visit that I would have been managing.
10 They were in Region Four. That was close to where the
11 meeting was being held.

12 So Tiffany Wilkins, who was my regional director
13 of Operations, and her team, her regional nurse,
14 regional QS person, Eve -- I think her name was
15 Illson -- and their sales, regional salesperson, who
16 was a new gentleman from Sunrise who I had worked with
17 previously at Sunrise, we visited several of the
18 communities that were in Region Four just so that I
19 could, of course, meet the teams in the communities,
20 see the communities, see how they operate, walk through
21 the building.

22 One of the big things that I wanted to do
23 immediately because we were finalizing capital budgets,
24 and I hadn't even seen these buildings yet, was to walk
25 through and say, okay, I've got a certain budget per

1 capital -- or building, what am I going to spend it on
2 in this building because I had to define that before
3 the budgets got locked down.

4 Q. And capital expenditures, would that be physical
5 improvements to the buildings?

6 A. Everything from safety all the way through to
7 lipstick and rouge cosmetic stuff.

8 Q. Can you tell me what that means that in terms of
9 like remodeling the building, what you would be doing?

10 A. Sure. I'd be looking to see if there were any
11 structural issues that I needed to bring someone in to
12 actually assess and give me an estimate for in the
13 foundations, in the buildings, sidewalks.

14 I would be looking -- look for mold. Mold is
15 always a huge issue in California. So I could walk
16 through a building and you could see black mold. You
17 could smell mold. So if a building I had a sense there
18 was an issue, I would bring in an environmental person
19 to assess the building for mold, and then from whatever
20 estimate I would get from remediation, that would go in
21 the capital budget.

22 I would be looking at whether I needed new
23 furnishing, whether I needed all new -- the kitchens.
24 The kitchens were always a sinkhole because they're so
25 expensive. The flooring in the kitchens, the walk-in

1 freezers, and a lot of the literal kitchen cooking
2 equipment, and a lot of that is what the State will
3 come through and look at, of course, because of
4 temperature controls, et cetera, so kitchen equipment.

5 Life safety was always the first one, of course,
6 are there areas where the carpets are all buckled or
7 the handrails are not -- are not functional.

8 So I would go through -- I had a whole, you
9 know, spreadsheet of all of the things that you learn
10 to walk through a building and you could see everything
11 wrong at a glance. I mean I can't even walk into a
12 hotel these days without seeing everything that's
13 wrong. So you would just use your check sheet and go
14 through it and then start getting estimates for how
15 much it would cost and see if you had enough budget to
16 cover it.

17 Q. During your third day visiting Region Four, were
18 there any serious structural issues or concerns that
19 were brought to your attention or that you observed?

20 A. Yes, in each building there were things that --
21 every one of these buildings needed a fairly big
22 investment in capital.

23 So you basically tried to capture all of the big
24 ones, and then you prioritized them because you knew
25 most of them were going to be multiyear. So I was

1 really trying to do that, get the big stuff, prioritize
2 it, and figure out, you know, which year I thought they
3 belonged in.

4 And then one of the communities that I toured
5 was a community called Grand Terrace, which was in
6 Region Four. And I was walking through because, of
7 course, I'm doing capital, so I have my head of
8 property with me, property engineer, Greg Ingram.

9 And we walked down a corridor of resident rooms,
10 and there was a resident door open, and the room was
11 stripped to the studs, and there was no kitchen -- no
12 refrigerator, microwave, there was no toilet, no sink.
13 There was nothing in the room. So I immediately said
14 was there a fire in this room, because I had never seen
15 a room that -- when someone moves out, you tend to
16 replace carpet and paint, but this is -- was quite
17 unusual.

18 So the executive director looked at the regional
19 nurse and looked at the regional Operations person, and
20 she said, "Well, we had a challenging resident
21 situation in this room."

22 I said, "Oh, what happened?"

23 And she said, "Well, I just started as the
24 executive director a couple of months ago or so." And
25 she said, "Every time I walked down this hallway, I

1 would smell urine. I would smell a horrible smell."
2 And she said, "I just thought that one of our residents
3 was incontinent, and I had to keep getting the carpets
4 cleaned. So I had them keep cleaning the carpets, but
5 every time I walked down here, the smell would still be
6 there or be worse."

7 So she said, "One day one of the care staff --"
8 or housekeeper or care staff -- "was walking down --"
9 must have been a housekeeper because she was pushing
10 her cart. And she said, "Could you open this door to
11 this resident room?"

12 And the housekeeper got very nervous, and she
13 opened the door. And the executive director walked in
14 and said, "I was just blown away from the feces and the
15 urine, and the place was just absolutely covered. And
16 the resident was in the room." It was a male resident.

17 And she -- the executive director just
18 completely was like blown away, called the nurse and
19 learned from housekeeping and care staff that the nurse
20 had instructed housekeeping and care staff not to go
21 into that resident room ever.

22 The resident had been conserved, had no family,
23 and no one visited him, and so they used to deliver his
24 meals to his room. And they didn't clean it, and they
25 didn't provide any care to him.

1 So I stood there with my mouth open while my
2 property guy went around taking photos of the room, and
3 the general manager or the executive director, who also
4 had come from Sunrise, looked at me, and she said --

5 I said, "What did you do?"

6 And she said, "I moved him to -- I got him all
7 set. I got a new perfect room. I got him all cleaned
8 up," blah, blah, blah. "The nurse is gone."

9 And so, you know, she just proceeded to tell me
10 that they had dealt with the situation, and the nurse
11 was gone, and I assumed the nurse was fired, and I
12 assumed that they, you know, did the necessary
13 reporting. This had happened a month or so previously,
14 and they were now at the part where they were
15 rebuilding the room.

16 And I was just -- I had just never seen anything
17 like that before. I never heard of anything like that
18 before. And I was quite -- I knew who this executive
19 director was from her reputation at Sunrise, and I knew
20 she was managing it. And I just remember that being in
21 my mind for -- until this day I mean.

22 But when I knew that this was a problem
23 division, this was not what I was thinking was the
24 problem.

25 Q. After that third day when you visited the

1 different communities, what was next on your agenda to
2 try to get a handle on this West Division and carry out
3 the mission that had been assigned to you for this
4 division?

5 A. Well, as I said, the big issue that I started
6 focusing on immediately was staffing; had Audrey
7 keeping track of all of the open positions. I started
8 working with the VP of -- with my boss, as well as the
9 VP of HR to get some resources dedicated to help us to
10 help the people in the field to actually get some good
11 people in place.

12 I made a decision and announced that any new
13 executive directors had to be phone screened by me, the
14 final choices. Lisa and I -- who Lisa was my only
15 counterpart. Since we didn't have the salesperson, I
16 was the acting Sales vice-president as well as
17 Operations --

18 Q. Is that Lisa Hulse?

19 A. Lisa Hulse. So Lisa and I, you know, worked
20 closely together to -- with HR to do everything we
21 could to get as many of these positions filled as
22 possible. And so I worked on the staffing side of it.
23 There was no way around it. I had to spend a huge
24 amount of time at that point in capital budgeting
25 because I was now -- now, it's November, and so all of

1 the budgets were already due, and we were late.

2 So I met with -- for days visiting communities
3 all over California with the head of property and the
4 head of dining. So that was Greg Ingram was the head
5 of property, and Zenzo Tazawa was the head of dining.
6 And those two positions, and these two gentlemen and I
7 traveled to a lot of the communities, especially the
8 ones that were really challenged from a capital
9 standpoint, to go through them and to figure out what
10 capital we needed.

11 And I took dining with me because, as I
12 mentioned, kitchen is, you know, a huge issue, and he
13 was an expert on the equipment and could tell me if I
14 could wait a year on this equipment or if I needed to
15 change it out right now. So I spent a great amount of
16 time on capital budgeting.

17 Then I spent a significant amount of time on
18 pricing because I had to get -- I really had to start
19 the year with clean prices because for the last
20 two years the pricing was all screwed up because it was
21 bundled. So I took to getting Jayne Sallerson on
22 conference calls with all of my sales -- regional
23 salespeople and all of the community salespeople, and
24 all of my Operations people -- not the Quality people,
25 Operations and salespeople to scrub our prices to make

1 sure that every single set of pricing was now unbundled
2 between what we charged for rent and what we charged
3 for care. So no longer would we allow anyone moving in
4 to get a bundled price package. And then we had to
5 address -- so first getting all of the pricing
6 themselves cleaned up.

7 And I learned quickly how no one really
8 understood pricing from a sales and marketing
9 standpoint. So we -- you know, I had Jayne help us to
10 do a lot of phone conference calls, web-based
11 conference calls on doing pricing, got the prices --
12 the price sheets cleaned up for people coming in.

13 But then I had to go back to all of the people
14 who already had bundled prices, and I had to unbundle
15 them, which meant I had to take whatever they were
16 paying, look at what they were actually assessed at in
17 terms of their level of care, figure out how much it
18 would have cost for them if they were paying market
19 price for that level of care. Subtract that amount for
20 how much they were actually paying, and the net amount
21 was literally how much they were paying for the rent.

22 So now I have a whole list of all of my
23 residents in every community, and I can see what my
24 real level of care is, so what my real level of acuity
25 is, and, of course, the big ah-ha is not just level of

1 acuity of what people are on in these communities, but
2 how much net is being paid for rent.

3 And I had more than a few people paying 200 --
4 anywhere from negative to \$200 in rent a month for
5 their food, for everything, because their acuity was so
6 high and the bundled price that they were paying was so
7 low, that when you took the market rate for what their
8 acuity would have cost them and subtracted it from what
9 their bundled price was, they were either not paying
10 anything or paying almost nothing for rent.

11 So that, in essence, was the big problem in
12 California was we were not covering our costs because
13 we had this bundled pricing. And we, of course --
14 who's going to pick up --

15 Who's going to take bundled pricing? The person
16 with the highest acuity. If I'm a resident and I'm a
17 family member, and I've just gone to a place where they
18 said they're going to pay based on your level of care,
19 here's your amount of assessment, here's your points,
20 here's how much it's going to cost; add to that how
21 much the rent is, here's your \$6,000 bill, and someone
22 says \$2,000 which were many of our rents, many of our
23 bundled prices, which one are you going to pick? If
24 everybody says, well, they're equal, we're a great
25 property, look how beautiful it is, look at our staff.

1 So we ended up with a lot of high-acuity
2 residents and not a lot of revenue for what we were
3 offering, and so our bottom lines were horrible in many
4 of these community -- in many of these communities.

5 Because one of the challenges for Emeritus is
6 that we were in these markets in California that were
7 hard hit by the recession. We were in "B" and "C"
8 markets in senior living terms. We were not in "A"
9 real estate markets. We were not Tracys and the
10 Auburns and the Coronas. We were in -- many of our
11 communities were in places that were not wealthy and
12 where there was a lot of land that had been overbuilt
13 by senior living companies, and that a lot of people
14 were in foreclosure on in their own homes.

15 And so there was huge price competition among
16 the assisted living providers in those markets. That's
17 why they did bundled pricing. That's why my
18 predecessor matched them to fill the building with
19 anybody who would pay to come here versus there. And
20 as a result, many of these communities in California,
21 not all of them, but many of them were underwater from
22 a financial standpoint against budget and sometimes,
23 several times against our commitments to our REITs and
24 our private equity firms.

25 Q. What would happen if a facility was underwater

1 in its commitments to the REITs or the private equity
2 firms?

3 A. How it manifested itself was that I got to spend
4 a tremendous amount of time with Scott Marshall from
5 Asset Management, and he put a lot of pressure on my
6 boss to turn those numbers around because he was
7 getting all of the pressure from the REIT. So it all
8 flow downs, and basically we were let --

9 I would get a list of properties that were not
10 meeting commitments, that were not meeting debt
11 covenants, or not meeting performance objectives, and
12 that's when I -- I would have to have the regional
13 director of Operations develop plans that would address
14 that, very detailed plans, and those plans went up to
15 Scott Marshall, who would then talk to the REIT about
16 what we were going to do to turn it around.

17 Q. And what could you do to turn around the numbers
18 on the properties that were underperforming in response
19 to the REITs and private equity demands?

20 A. Well, it depended on the property, of course.
21 But for the most part, it was very -- there's like four
22 drivers for -- you got higher occupancy, so you got
23 more people to move in, you close the back door, so you
24 didn't -- you watched what was going out the back door
25 in terms of residents, and you tried to do everything

1 you could to keep them.

2 You tried to offer pricing concessions to people
3 that said they were going to move someplace else. You
4 would -- you know, most of the time it was heavily
5 revenue driven. So you might look at freezing their --
6 for a back door issue, you might say, well, I'll freeze
7 your rates for a year. Again, it was price
8 concessions.

9 But, first, it was getting occupancy, closing
10 the back door, and then managing costs.

11 And managing cost, there was really only one
12 number that made a difference, and that was labor. At
13 the end of the day, labor is the single biggest expense
14 item that is controllable by the community.

15 Q. And so when you say managing costs labor, what
16 does that mean?

17 A. To me what it meant was that you made sure that
18 you hired people into the position you were budgeted
19 for at the management level, so you filled those
20 positions at budget.

21 And then for the line staff -- line staff is not
22 fixed in senior living communities in for-profits.
23 It's variable staffing, and it's variable based on
24 occupancy. It's variable based on acuity.

25 So the most important thing to manage labor

1 successfully -- and by successfully I mean where the
2 residents' safety is considered, of course, first and
3 foremost, but, secondly, that you're properly utilizing
4 your labor dollars -- is to make sure that you have a
5 way of staffing on a variable basis, on a weekly basis
6 for the number of residents that are actually in the
7 community, in each neighborhood, whether it's memory
8 care or whether it's assisted living for a SNF, and
9 that it's appropriate for the acuity of the residents.

10 Because the residents are paying based upon
11 where they -- unless it's bundled, are paying for their
12 acuity level. So they're paying for extra labor, so
13 it's not just one resident is not the same as another
14 resident. So both the number of residents, the acuity
15 of the residents, to make sure that you have full staff
16 for that situation and only that situation, so that you
17 are not using overtime, so that you are not using
18 registry. So you're not --

19 There are things that people do that are sloppy
20 in labor, and so you have to make sure you're not doing
21 that. But that's after making sure you've got enough
22 labor.

23 I never had the problem of I didn't -- I had too
24 much labor in terms of how I would get to what was
25 needed. But sometimes because they couldn't get

1 staffing, oftentimes they ended up paying overtime to
2 people, double time, and, you know, that's -- that can
3 be disastrous.

4 Q. When you say, "can be disastrous", what do you
5 mean?

6 A. To the bottom line, sorry.

7 Q. Was it your understanding that Emeritus was at
8 all times required to meet the needs of each of its
9 residents in each of its communities?

10 MS. BADAWIYA: Overbroad, compound.

11 THE WITNESS: Would you say that again? Sorry.

12 Q. BY MS. CLEMENT: Was it your understanding that
13 Emeritus was -- always had to meet the needs of each of
14 its residents?

15 A. Of course.

16 Q. And that requirement that they meet the needs of
17 each of their residents was independent of whether or
18 not Emeritus had made the decision to use bundled
19 pricing?

20 A. Absolutely.

21 (Discussion held off the record.)

22 MS. CLEMENT: Why don't we take a quick break
23 here.

24 THE VIDEOGRAPHER: This ends tape number two of
25 today's deposition. We're going off the record at

1 2:10 p.m.

2 (Break taken in proceedings.)

3 THE VIDEOGRAPHER: We are on the record at
4 2:24 p.m. The date is August 29th, 2012. This begins
5 tape number three of the deposition of Susan Rotella.

6 Q. BY MS. CLEMENT: Can you tell me what an employee
7 commitment meeting is at Emeritus?

8 MR. WELCH: Sorry, could you repeat that?

9 MS. CLEMENT: Sure.

10 Q. Can you tell me what an employee commitment
11 meeting is at Emeritus?

12 MR. WELCH: Thank you.

13 THE WITNESS: Employee commitment meetings are
14 basically skip-level meetings. So a person who, say,
15 in my position or a regional person, regional
16 Operations, regional Quality, or regional Marketing,
17 would meet with the line staff in a community without
18 the management of that community present.

19 Q. BY MS. CLEMENT: What's the purpose of that
20 employee commitment meeting?

21 A. It's an opportunity for the employees to share
22 concerns that they might have or requests that they've
23 made that haven't been, in their opinion, successfully
24 heard or acted upon.

25 Q. And did you participate in any employee

1 commitment meetings in your tenure as vice-president of
2 Emeritus?

3 A. I was. I was able to participate in one along
4 with Audrey Withers, my director of HR.

5 Q. And was that employee commitment meeting with
6 Ms. Withers in Region One?

7 A. Yes.

8 Q. And in that employee commitment meeting, was it
9 you and Audrey Withers, as well as the caregiving staff
10 at the facility?

11 A. Yes. Among others line staff, non-management
12 staff, cooks, administrative, clerical.

13 Q. But no managers, in other words, none of the
14 directors?

15 A. Correct.

16 Q. And what did you learn in the employee
17 commitment meeting -- or strike that.

18 What did the employees tell you in that employee
19 commitment meeting you attended with Audrey Withers in
20 Region One?

21 MS. BADAWIYA: Calls for hearsay, it assumes
22 facts, it lacks foundation, it's irrelevant as to this
23 case.

24 MS. CLEMENT: I'll rephrase.

25 THE WITNESS: Okay.

1 Q. BY MS. CLEMENT: What did you learn from the
2 Emeritus line staff during the employee commitment
3 meeting you attended with Audrey Withers?

4 MS. BADAWIYA: Same objections.

5 THE WITNESS: It was a Roseville facility --
6 excuse me, community, Roseville community. Roseville
7 was a small all memory care community. It was very
8 close to our Citrus Heights community, which was also
9 all memory care, although Citrus Heights was huge.

10 Roseville had been an incredibly challenged
11 community. For such a small community, which was all
12 dementia care, which is usually a very need-driven type
13 of service, and generally is the area where you have
14 fewer vacancies than assisted living, we had a
15 tremendous -- that community had a tremendous history
16 of challenges, a lot of staff turnover, especially
17 executive directors, a lot of occupancy challenges.
18 And, of course, because it had such poor occupancy and
19 it was such a small building, it had very bad net
20 operating income.

21 So I was up at Roseville for several reasons,
22 because I wanted to meet the executive director. We
23 had a reasonably new executive director, and she was
24 one of the ones that had been identified as poor
25 performing, and that she was someone that I wanted to

1 make sure that I had chance to meet with and meet her
2 team.

3 And I also was going up there for an open house
4 that was going to be at Citrus Heights, the reopening
5 of part of that building. So that's why we took the
6 opportunity then to also do an employee commitment
7 meeting because I wanted to understand how the
8 employees felt about the executive director.

9 And so we had -- I think we had two or three
10 meetings, because you can't take, of course, everybody
11 off the floor. And small meetings, small number of
12 staff, so that everybody had an opportunity to talk.
13 And usually the meeting starts out with Audrey
14 explaining the ground rules of an employee commitment
15 meeting and that, you know, they're free to say
16 whatever they want, it's not going to go back to them.
17 It's any issues that they bring up are so that we can
18 repair them, remedy them, but their names will not be
19 used.

20 So with that, I was actually surprised.
21 Although line staff can be very -- it often depends on
22 their nationality, but very polite and differential to
23 authority and afraid to say anything negative, but in
24 this community, it was like they were just waiting for
25 the lid to come -- they just -- they just wanted to

1 share everything.

2 Q. BY MS. CLEMENT: So what did the line staff share
3 with you at the two to three employee commitment
4 meetings you participated in at Roseville?

5 A. They hated the executive director. They thought
6 that she was mean to the residents, that she was mean
7 to them, that she didn't know anything about the
8 business, that she just kept cutting their staff and
9 labor, all she cared about was making her bonus, that
10 she didn't want any of the residents to be in the lobby
11 when anybody was coming in for a tour of the community.
12 She wanted the place to look like, you know, basically
13 it was a beautiful senior community with everybody
14 healthy and, you know, looking happy and active.

15 This was a very frail community of residents
16 with dementia, and so they were upset because they had
17 to take residents who liked to sit in the lobby and
18 basically keep them in their room during tours so that
19 families coming through didn't see what residents with
20 dementia really looked like. They were very upset
21 about that.

22 They were very upset that they felt that they
23 did not have enough staff. They were upset -- since it
24 was such a small community, one of the challenges when
25 you're in a really small community -- and this had

1 about 24 units, which is very small, it -- you don't
2 have a lot of management staff because you can't handle
3 that level of overhead over 24 units. So when they
4 lost someone or it was an open position, it was -- it
5 was a very noticeable thing.

6 So they frequently had a lot of turnover. I
7 mean this executive director, who they really didn't
8 like, had come onboard after several others had turned
9 over. And in between them turning over, they had the
10 Citrus Heights person, executive director, coming over
11 and being kind of a part-time executive director. And
12 then they would have the business office manager, who
13 actually had an RCFE license, in the Roseville
14 community as the acting executive director.

15 So they were very concerned that they didn't
16 have the right leadership. When they had leadership,
17 they weren't respectful of the residents or respectful
18 of the staff.

19 And that they had a lot of, you know, just
20 cutting their hours, and that they couldn't live on
21 those hours, and that the residents couldn't be cared
22 for properly with those hours.

23 Q. Over the course of your tenure at Emeritus, did
24 you hear from other Emeritus employees concerns about
25 cutting labor hours that would affect the resident

1 care?

2 A. Constantly. I heard this, as I mentioned, in my
3 initial meetings down in Anaheim for those three days
4 both with the staff at the management level.

5 I heard it at the community level when I went to
6 do the visits. I heard during my visits that they
7 didn't know how to do staffing at the -- they didn't
8 know how to budget staffing.

9 They had a budget for staffing, but they knew it
10 wasn't enough, and they had no way of justifying
11 direction to cut staff 10 percent each time they heard,
12 but they knew that they didn't have enough staff to
13 take care of the residents.

14 I attended -- a number of my regional directors
15 of Operations, they'd have kickoff meetings at the end
16 of the year with all of their communities and with the
17 triad, the CTM team from each of the communities. And
18 they'd have a kickoff meeting, and I attended those.

19 And a constant message or theme from that was
20 that Chris Belford told us to cut staff 10 percent
21 before you came onboard. Now we're hearing labor, you
22 know, needs to be cut. We're not making our numbers,
23 and we just -- we can't cut staff any more. We don't
24 even have the staff we're supposed to have and to cut
25 any more is just not possible.

1 Q. Did you take these concerns that you heard from
2 regional and at the community level, people that
3 reported to you, to anyone else at Emeritus?

4 A. Yes.

5 Q. And who did you take these concerns that the
6 staffing was being cut too much to meet the needs of
7 the residents?

8 A. Well, before I say that, I took directly to my
9 boss the fact that there wasn't enough staff at the
10 communities. No matter what company you're in, in
11 senior living, everyone always feels like you don't
12 have enough staff, even if you're in a not for profit,
13 I mean it's just kind of -- it's like being in any
14 company, we need more staff.

15 So, you know, I listened to all of this. I
16 said, okay, okay, all right, all right. I'm hearing
17 it. I'm hearing it. And I -- it was still very much
18 in that first month of learning Emeritus' ways.

19 I came from a company -- well, the closest proxy
20 or similar company to Emeritus being Sunrise, I --
21 which was where I was trained on staffing and how to do
22 staffing to make sure that, one, you stayed on budget,
23 and, two, you kept the residents safe -- well, it
24 should be kept the residents safe and stayed on budget.
25 So there were very specific tools and protocols for how

1 you do staffing. And that started from the very ground
2 level, community level, where every week, every
3 department head did their staffing plans, and those
4 staffing plans rolled up into the budgets.

5 So when I got to Emeritus -- and, of course, you
6 know, I was like drinking from the firehose with all of
7 the information, trying to learn all of their policies
8 and procedures in every department, and I was working
9 on the revenue side, revenue, revenue, revenue. Okay,
10 I've got to get to the cost side over here, and I keep
11 hearing about labor.

12 So every week I used to have a staff meeting
13 with my boss, you know, kind of a one-on-one when he
14 had time, and I would always provide an agenda in
15 advance of my meeting with him just to kind of keep me
16 on point.

17 And I frequently had labor on there to
18 understand how does Emeritus calculate labor? How --
19 you know, I understand the budgeting side of labor from
20 the standpoint of, you know, what percentage of revenue
21 should we have budgeted to be labor. But how do we --
22 in the communities, what kind of tools do we use in
23 order to provide the frontline staff a way of
24 calculating safe labor and budget-appropriate labor.

25 And so I would keep asking my boss this

1 question, and I never really understood his answer.
2 And I kept thinking I was asking the question
3 incorrectly. And so he would say, well, we use PRD.
4 We use per resident day. I said I understand per
5 resident day, but per resident day only accounts for
6 resident occupancy. It's a certain amount of labor per
7 resident is budgeted per day. So on average we budget
8 this much labor on the care staff, and then in the
9 kitchen staff we budget this much labor for cooks per
10 resident. Everything is per resident day.

11 I said I totally understand per resident day
12 budgeting for labor. What I am asking you is how at
13 the community level does that grand exalted budgeted
14 metric get translated down so the frontline supervisor
15 knows how to take the number of residents they have,
16 and more specifically the acuity of each of those
17 residents, and figure out the number of hours of labor
18 that is authorized for them to staff the following
19 week.

20 And he never really answered that. He seemed a
21 little frustrated by my question, and we kept going
22 back to per resident day, and he said, you know,
23 it's -- you know, all you have to do is manage your
24 bottom line. I'll work with you on your budget and
25 your bonus, and you just have to make the bottom line.

1 I said, thank you, that's great that you're
2 going to give me relief. I appreciate that. I'd like
3 to make my bonus. But I'm just trying to understand
4 this because in all of my meetings that I go to, the
5 teams at the frontline level are asking me, the
6 vice-president of Operations, how they manage their
7 labor budget. And they keep telling me they're
8 getting -- and you have instructed me, as you
9 instructed Chris Belford, that we are way over in labor
10 in California and we have to cut our budgets for labor.
11 So what I'm asking you is what tools do Emeritus use in
12 all of their communities to give to their frontline
13 staff that they can do.

14 And never got a good answer. Call Chris
15 Belford. Chris will spend time with you and talk to
16 you about labor.

17 So never had a chance to connect with Chris
18 about it. But about that same time --

19 Q. Can I ask you a question?

20 A. Yeah.

21 Q. Throughout your entire tenure at Emeritus, when
22 you met with executive directors, regional directors,
23 and the division people, and the senior executives
24 about staffing, did anyone ever explain to you how
25 Emeritus was accounting for resident acuity in its

1 staffing budget?

2 A. Absolutely not, only on the revenue side.

3 Q. Was it your understanding that Emeritus, based
4 upon your training, experience and communications with
5 the Emeritus senior executives, your own boss, your
6 regional directors, as well as the community-level
7 directors, that the Emeritus budget for the communities
8 for labor did not include a component for resident
9 acuity?

10 A. I'm sorry, I think I got lost in that.

11 MS. BADAWIYA: Let me object here.

12 MS. CLEMENT: I'm going to rephrase the
13 question.

14 Q. Did you speak with other senior executives about
15 your concerns regarding staffing that you've just
16 described for us?

17 A. Yes.

18 Q. And did you bring -- raise with other senior
19 executives your concerns regarding the fact that the
20 labor budget did not include a calculation for resident
21 acuity?

22 A. Yes.

23 MS. BADAWIYA: Let me object, it assumes facts
24 that haven't been established, it lacks foundation,
25 it's an incomplete hypothetical.

1 Q. BY MS. CLEMENT: Who at the senior level of
2 management did you raise your concern that the Emeritus
3 labor budgets did not -- in the West Division did not
4 include a factor for the resident acuity?

5 MS. BADAWIYA: Same objections.

6 THE WITNESS: In addition to Chris Hyatt, I
7 raised -- and it was a question. I didn't -- I was
8 trying to figure out where acuity was accounted for
9 because I couldn't believe it wasn't accounted for. I
10 just thought I didn't understand how it was accounted
11 for, and that's what I was trying to learn so that I
12 could train my own people.

13 So when I couldn't get an answer from
14 Chris Hyatt, I brought up the issue specifically as a
15 training -- a broader training request of
16 Melanie Werdel on a conference call that she and
17 Liberty Stansberry, our VP of HR, were on; a conference
18 call that was -- was at Melanie's request of me that
19 she and Liberty talk to me about how they, in HR and
20 training, could help my organization with whatever
21 needs we felt that her organization could provide.

22 So on this conference call, which was actually
23 part of the preparation for another conference we were
24 going to be having with the State, with DSS in
25 February, where we were all going to be going down to

1 Southern California, Melanie asked, since that meeting
2 was going to be with the State in the afternoon, and
3 all of these people were flying down to Southern
4 California the night before, was there an opportunity
5 in the morning for her team to meet with my regional
6 team and my Southern California executive directors and
7 talk about anything that her organization is
8 responsible for that they could help with.

9 And I almost jumped out of my chair because they
10 had been so helpful on recruiting, that I thought,
11 great, they're also responsible for training. So I
12 told Melanie that one of the things that would be of
13 great help would be if -- since Liberty was responsible
14 for training, if -- and she was coming to the meeting,
15 if we could discuss the real training deficits that we
16 had in California at the management level and also the
17 non-management level, and what we might do together to
18 create a straw man for a basic executive director and
19 regional director training program.

20 And she was thrilled to do that, and Liberty
21 said she was thrilled to do that. So I organized the
22 meeting in the morning, invited my executive directors,
23 who -- all of the executive directors and regional
24 people who were coming from the afternoon meeting that
25 the State called, I asked them to come earlier, and we

1 were meeting with Liberty, Melanie, and some of
2 Liberty's team that were in policy and were in
3 E-Learning.

4 So we were going to have a very frank -- and we
5 had agreed in advance that our agenda was that we were
6 going to have a frank conversation about training and
7 about the fact that that was an area that we did not do
8 a good job of on-boarding our new team members.

9 And since I was having so many new team members
10 coming onboard, and I had so many existing team members
11 who had no idea in certain areas what they were doing,
12 here would be a great way for us to, you know, kind of
13 bring up the capabilities of the management team.

14 So --

15 Q. BY MS. CLEMENT: I have a question.

16 A. -- she agreed.

17 Q. When you spoke with Melanie Werdel, was this
18 regarding, in part, the meeting that Myron Taylor had
19 requested with Ms. Werdel, other senior management and
20 the Southern California team of Emeritus to discuss
21 Department of Social Services concerns?

22 MS. BADAWIYA: I'm going to object that
23 misstates what she just said, that lacks foundation, it
24 assumes facts that haven't been established, it
25 mischaracterizes her testimony.

1 THE WITNESS: I'm sorry. Could you repeat the
2 question, please?

3 Q. BY MS. CLEMENT: Yes.

4 Your communication with Melanie Werdel where you
5 spoke about training and setting up a pre-meeting to
6 the meeting with the Department of Social Services --

7 A. Yes.

8 Q. -- was that meeting that you referenced with the
9 Department of Social Services the one that Myron Taylor
10 called for February 24th, 2010?

11 A. Yes.

12 Q. And was your understanding of the purpose of the
13 February 24th, 2010 meeting with DSS to talk about
14 concerns Department of Social Services had?

15 MS. BADAWIYA: I'm going to object. That
16 misstates the testimony, it misstates the records, it's
17 a mischaracterization of that meet and greet that the
18 Department of Social Services does with all of the
19 RCFEs in California.

20 Go ahead.

21 THE WITNESS: There was a meeting, mandatory
22 meeting that Myron Taylor was arranging with
23 Melanie Werdel and Budgie -- Budgie, Budgie Amparo,
24 that we were required to have key members from my team
25 and from Lisa Hulse's team attend in Southern

1 California. And that was the meeting that was
2 happening in the afternoon.

3 The meeting for training was going to be in the
4 morning with the same people.

5 Q. BY MS. CLEMENT: In your telephone call with
6 Melanie Werdel regarding the upcoming meeting with the
7 Department of Social Services and your Southern
8 California team and senior executives, did you discuss
9 with her your concerns about staffing that had been
10 raised to you across the board in California?

11 MS. BADAWIYA: Misstates her testimony, it lacks
12 foundation, it assumes facts that haven't been
13 established.

14 THE WITNESS: The time that I remember bringing
15 up what the specific training issues were was the
16 morning of the meeting. I may have brought it up on
17 the phone call, but I just specifically remember
18 talking in generalities on the conference call that I
19 wanted to develop a skeleton straw person training for
20 executive directors and regional directors of
21 Operations.

22 Q. BY MS. CLEMENT: And what does that mean, "a
23 skeleton straw person"?

24 A. It means when you come onboard to a new company,
25 just similar to how I had my on-boarding, someone sits

1 down with you and reviews all of the expectations that
2 they have of you, all of the tools that you'll be
3 required or available to use to do your job, all of the
4 reports that you'll use and be required to do, and the
5 procedures and the processes that the company has
6 mandated to run its business.

7 Q. And did you have discussions with anyone else
8 from Seattle corporate, besides Ms. Werdel and
9 Liberty Stansberry, regarding the agenda items for the
10 February 24th meeting?

11 A. The only other person I talked to about a
12 training agenda specifically was one of my counterparts
13 in the Midwest, but she wasn't coming to the meeting.
14 That was another avenue that I was taking to get more
15 training resources.

16 Q. Okay. Looking at Exhibit 391, is this an e-mail
17 that you sent out to Ms. Werdel and Ms. Stansberry and
18 your team members regarding the pre-meeting of --

19 A. Yes.

20 Q. -- February 24th?

21 A. Sorry. Yes.

22 Q. And then if you turn to the next page -- what's
23 the date of that e-mail? Sorry.

24 A. February 11th, 2010.

25 Q. Okay. And then on the next page, is there an

1 agenda there?

2 A. Yes.

3 Q. And who prepared this agenda for the
4 February 24th executive director orientation and
5 training?

6 A. I did.

7 Q. And who was present at the February 24th
8 executive director orientation and training in Southern
9 California?

10 A. Melanie Werdel, Liberty -- do you want their
11 titles or just their names?

12 Q. Melanie Werdel, executive vice-president of
13 Administration?

14 A. Yes. Liberty Stansberry, vice-president of
15 Human Resources; Lisa Hulse, my counterpart as the
16 vice-president of Quality Services for the west;
17 Audrey Withers, the western division Human Resource
18 director; and four of my five regional directors of
19 Operations, including one from the north.

20 This meeting was really -- with DSS was only for
21 the Southern California communities, but because the
22 meeting in the morning was so important to all of my
23 regions, I invited my regional director of Operations
24 from the north. I had two of them in the north,
25 Mary Winters from Region One came, and she also came

1 representing Tracy Flaherty from Region Two, who stayed
2 behind to make sure she was close at hand if anything
3 happened up north.

4 Q. Okay.

5 A. And then, of course, the three regional
6 directors of Operations from Regions Three, Four, and
7 Five, and it looks like five executive directors from
8 the Southern California region.

9 Q. Were there other senior executives at the
10 meeting of February 24th besides Liberty and
11 Melanie Werdel?

12 A. Yes, when I -- I didn't realize that -- this was
13 the people who were required or had agreed to
14 participate.

15 When we got to the meeting, there were several
16 other people that were there, most notably,
17 Budgie Amparo, who is your EVP of Quality Services, and
18 then there were several other members from
19 Liberty Stansberry's team, Ana de la Cerda, who was in
20 charge of, I believe, policy, public policy; Lori
21 Louck, who I believe was at the time, if not still,
22 responsible for the intranet site or the E, the E-Site
23 for Emeritus where a lot of the policies and procedures
24 reside.

25 And I just noted one of the things that I wanted

1 to just say about these, I'm now recalling, these five
2 executive directors, I specifically asked for executive
3 directors who were recently hired in the last several
4 months to be invited to come. So I asked the RDOs, the
5 regional director of Operations, to select specific
6 executive directors who had been there for, you know, a
7 number of months, under six months, and so that they
8 could talk openly and honestly about what their
9 on-boarding process had been.

10 Q. And what does that mean, "on-boarding process"?

11 A. It means the process of when they started with
12 the company, what kind of orientation that they had
13 about how to be successful in their job.

14 Q. Is that --

15 On-boarding, does that include -- is that your
16 initial training and orientation to the company and
17 their policies?

18 A. Among other things, absolutely. It would be --
19 on-boarding is everything from meeting all the team
20 people that you're going to be working with, both in
21 your communities, at corporate. It's going over the
22 policies and procedures. It's going over the reports
23 that you're going to be responsible for preparing.
24 It's going over, you know, how you get bonused, how
25 you -- your compensation, making sure all of that's

1 clear, making sure you understand your reporting
2 relationship; understand what the plan mandatory
3 meetings are.

4 There were a lot of meetings that were regularly
5 scheduled in Emeritus, so making sure you understood
6 that so you could schedule your day.

7 Q. As the vice-president of Operations for
8 Emeritus, did you have to know what the budget
9 incentive programs were for all of the department heads
10 and regional heads?

11 A. I had to know -- really, the one that I was most
12 focused on, because I was responsible for, was the
13 regional directors of Operations. And that's really --
14 I'm sure I would have known all of the rest of them had
15 I stayed there long enough, but I spent a pretty
16 significant amount of time scrubbing the budgets, and
17 then scrubbing -- actually, the budget was basically
18 the same as the incentive document. So it was at the
19 same time you're scrubbing the budgets, and also
20 determining what the objective was for each community,
21 and then each regional person, in making their targeted
22 bonus for the following year -- they were actually
23 quarterly bonuses.

24 Q. And were the quarterly bonus incentive program
25 for the regional team based strictly on financial

1 metrics?

2 MS. BADAWIYA: It's compound, it assumes facts,
3 lacks foundation, calls for speculation.

4 THE WITNESS: I will say --

5 Q. BY MS. CLEMENT: Let me --

6 Were the incentive bonus programs for the
7 regional directors of Operations based on financial
8 metrics?

9 MS. BADAWIYA: Same objections.

10 THE WITNESS: I would have to refresh my memory
11 in looking at their papers, but the majority of what
12 their bonus was on their EBITDARM.

13 Now if they had -- if they had -- well, yes,
14 this would also be a financial metric. If they had
15 community, say a regional director of Operations made
16 it, because their whole ten properties overall made it,
17 but they had a community that was like on a REIT watch
18 or -- and that's a financial metric, and they could get
19 dinged for that even if they made it. So, yes, that's
20 a financial metric.

21 Q. BY MS. CLEMENT: Were there any quality-of-care
22 metrics utilized in the bonuses for the regional
23 directors of Operations while you were at Emeritus?

24 A. Not Operations.

25 Q. At the morning meeting of February 24th where

1 there was the ED orientation and training, who led the
2 meeting?

3 A. I introduced the meeting, so I guess I would say
4 I facilitated the meeting. But it was really -- the
5 whole purpose of it was to be an open discussion and
6 exchange of ideas and to come up with kind of an action
7 plan at the end of the meeting for how we could make
8 improvements in our training.

9 Q. And were the executive directors invited to
10 voice concerns that they had about the operations of
11 their buildings?

12 A. I specifically invited them to attend and
13 started the meeting in the introductions by saying that
14 they were invited to be honest, and that this was -- to
15 be constructive, but to be honest about their
16 on-boarding experience, and what areas in particular
17 they had the most challenges with when they started the
18 job and maybe still continued to this day in terms of
19 understanding how to be successful.

20 Q. And what did you learn in that meeting from the
21 executive directors about their on-boarding experience?

22 MS. BADAWIYA: Calls for a narrative, overbroad,
23 calls for hearsay.

24 THE WITNESS: That we didn't have an on-boarding
25 process. The on-boarding process was really left up to

1 the regional director of Operations to on-board a new
2 executive director, and they didn't have specific tools
3 from corporate that, you know, here is a binder of how
4 to go sit down with your executive director and, you
5 know, walk them through.

6 They basically -- most of them were executive
7 directors who had been promoted, so it was their job to
8 kind of just on-the-job train their new executive
9 directors. And that that was a hit or a miss depending
10 on who the regional director of Operations was, and if
11 they had time, and if they had the knowledge, and if
12 they were particularly good at training and coaching.

13 Q. BY MS. CLEMENT: What did you learn -- strike
14 that.

15 With regard to the open floor that the executive
16 directors had to speak about their most challenging
17 aspects of their operations, was there a single topic
18 that was raised most frequently?

19 A. I would say there were two.

20 Q. And what were those two topics?

21 A. Number one was how do we do staffing.

22 And I'm looking at the names of all of these
23 folks, almost all of these executive directors used to
24 work at Sunrise, and so all of us had been -- had our
25 initial training, our primary training on staff

1 management or staffing management at a company that had
2 a very defined process for how to -- not just budget
3 staffing, but how at the line level you scheduled it on
4 a weekly basis to make sure that you had the right
5 staffing for the number of residents and the acuity and
6 also so that you were on budget.

7 And so --

8 Q. Let me ask you another question.

9 So of the two biggest concerns you heard from
10 these executive directors on February 24th, the first
11 was how do we do staffing, correct?

12 A. Uh-huh, yes. Sorry.

13 Q. What was the second?

14 A. They didn't understand their financial
15 statements. They didn't understand how to read them.
16 They didn't understand what was in the line items.
17 They didn't understand how to do a variance report.

18 A variance report is what was required of them
19 to do every month. This is your actual income
20 statement or financial statement, and this is your
21 budgeted, and this is the variance column, the
22 difference between what did you and what you were
23 supposed to do, whether it was positive or negative.

24 And for negative ones of a certain amount over
25 five percent, say, they would have to explain why that

1 variance happened and what they were going to do to
2 make sure that negative variance didn't happen the next
3 month or quarter.

4 And most executive directors don't have a
5 background in financial understanding and didn't quite
6 understand how those numbers even materialized. I
7 mean -- so they basically waited for their financial
8 statements to come out every month, and it was like,
9 did I do good, did I do bad. It wasn't I know exactly
10 how I did because I managed all of these metrics, so.

11 And that's what they were getting bonused on and
12 that's what they were getting fired about, so they
13 wanted to understand, how do I read these. How do I
14 actually proactively drive these financials as opposed
15 to react to them when they come out.

16 Q. With regard to the concerns that the executive
17 directors expressed about staffing, was there any
18 response from the senior executive team who were in
19 attendance?

20 A. I'm sorry. Did you say about staffing?

21 Q. Yes. I'll rephrase.

22 A. Sorry.

23 Q. With regard to the executive directors' concerns
24 that they raised -- strike that.

25 You've told us executive directors raised

1 concerns about how they were supposed to staff their
2 buildings with the line staff?

3 A. Yes.

4 Q. Was there any response to those concerns voiced
5 by the executive team from Seattle?

6 A. Yes. And in part when they -- when the
7 executive director shared their challenges with how to
8 do staffing, they talked about where they came from.
9 And, again, several of them came from Sunrise because
10 Emeritus hired a lot of people in California from
11 Sunrise.

12 And I shared in that meeting that, like many of
13 these executive directors, I also had my formative
14 training on staffing in Sunrise. So I also was unclear
15 about the process that -- what is Emeritus' staffing
16 model, so I --

17 Q. Can I ask you another follow-up question?

18 A. Sure.

19 Q. Sorry to interrupt.

20 Were there also executive directors at that
21 meeting who came from other backgrounds besides Sunrise
22 that had concerns about how to staff?

23 A. Yes.

24 Q. So was it your experience that the use of
25 staffing formulas and minimum staffing standards was

1 common within the assisted living facility industry?

2 A. Yes.

3 Q. And what was the response from the -- or strike
4 that.

5 Was there anyone from the senior executive team
6 who responded to the executive directors and your
7 concerns about how to staff the Emeritus way without a
8 staffing formula?

9 A. Yes.

10 Q. And who or whom from the senior executive team
11 responded?

12 A. Budgie Amparo, our executive vice-president of
13 Quality.

14 Q. And was it your understanding that Budgie Amparo
15 was the head nurse for Emeritus?

16 A. Yes.

17 Q. And what did Mr. Amparo say in response to the
18 concerns raised by the executive directors and yourself
19 as to how to staff their facilities without a staffing
20 formula?

21 A. He got very agitated, which I was surprised at,
22 because I was trying to be so politically correct in
23 asking my question and be very clear, and I forgot he
24 was actually in the meeting.

25 And he jumped up, he said, "We do not use

1 staffing formulas at Emeritus. We will never use
2 staffing formulas at Emeritus." And I just -- "We are
3 not Sunrise."

4 Q. Did Mr. Amparo explain in that meeting as to why
5 Emeritus would never use staffing formulas?

6 A. Yes, he explained his rationale. He said --
7 Budgie came from the skilled nursing background. And
8 in skilled nursing versus in an RCFE, there are
9 prescribed ratios, especially if you were a Medicare or
10 Medicaid certified building, and there are
11 federally-required staffing ratios, and those must be
12 in place when you're audited.

13 And his statement to the group was, "We don't
14 use staffing ratios. We are not the skilled nursing
15 industry. We don't use staffing ratios because if we
16 did not have the right amount of staffing in place and
17 a resident issue occurred or incident, negative
18 resident issue or incident occurred, and we didn't have
19 the right staffing, we could be sued."

20 Q. Did anyone respond?

21 A. There was a great change in the tenor of the
22 meeting after that. Everyone kind of shut down, and
23 Budgie just went on to explain, "We are not skilled
24 nursing, and I've had many experiences with staffing
25 formulas, and we will never have a staffing formula at

1 Emeritus."

2 And so I believe that I tried to, again, ask a
3 question of Budgie or the group to say, okay, I
4 appreciate that we don't use ratios or we don't use
5 ladders or we don't use whatever, you know, one of
6 these metrics, but how do we then account for staffing
7 at the frontline level?

8 And he's like that's in the budget. He just,
9 you know, referred back to the budget. And I realized
10 at that point I was not going to get an answer. Either
11 he didn't know, other than we would never have a ratio,
12 but he didn't know how we did staffing, or he just
13 wasn't going to share any more at that point in time.
14 But I just -- I knew don't ask any more questions after
15 that.

16 Q. After that meeting with Budgie Amparo, Ana de la
17 Cerda, Melanie Werdel, and your regional and executive
18 directors, did you go into a meeting with the
19 Department of Social Services?

20 A. We broke for lunch, yes. We had a lunch
21 meeting -- we had lunch, and then Myron Taylor and his
22 entire team of licensing analysts came in.

23 Q. And who led that meeting?

24 A. Melanie Werdel.

25 Q. And what were the issues that were discussed at

1 the DSS meeting that afternoon?

2 A. There was an agenda that had been developed by
3 DSS, by Myron Taylor, and had been submitted in advance
4 to Melanie and Budgie with the people that they wanted
5 and the positions that they wanted in attendance.

6 So Myron started the meeting by introducing
7 everyone, and then we introduced everyone. And he --
8 he said that they wanted to have this opportunity to --
9 there was a lot of new players at Emeritus, and that he
10 had some changes in his staff, and they certainly
11 wanted us to get to know each other.

12 And he knew that Sunwest was the acquisition --
13 potential prospective acquisition of Sunwest was about
14 to go into its final negotiating stages, and that there
15 would be additional communities that would come into
16 California under Emeritus.

17 And he shared that he was concerned that there
18 were a number of communities, under Emeritus currently,
19 that had -- that were on noncompliance. And he wanted
20 to make sure that he understood our policies and
21 procedures and issues and challenges before we took on
22 even more communities.

23 And he wanted each one of his licensing people
24 to talk about the issues that they saw.

25 Q. And did the licensing program analysts and

1 licensing program manager who were present discuss
2 issues regarding noncompliance in existing Emeritus
3 facilities?

4 A. Yes.

5 Q. And what were the noncompliance issues that they
6 were raising in that meeting?

7 A. Most of them were talking about them in
8 generalities, in terms of not this community, that
9 community, it was these are the issues that we're
10 seeing more and more of, and that, you know, these are
11 areas of concern. And we just want to understand how
12 you are going to address these kinds of issues.

13 Q. And what were the issues that were related that
14 were of concern by the Department of Social Services in
15 that meeting?

16 A. There were a whole host of them, you know, some
17 of them minor, some of them more significant. They
18 had --

19 Q. What are the significant issues?

20 MS. BADAWIYA: Calls for hearsay, it's
21 irrelevant to this action.

22 Q. BY MS. CLEMENT: What were the significant issues
23 that were raised by the Department of Social Services
24 in that meeting?

25 A. They had issues with staffing, in understanding

1 our staffing and in ensuring that we had enough
2 staffing because we had some incidents that they felt
3 were the direct result of not having enough staffing,
4 like elopements.

5 They wanted to make sure that we were hiring
6 trained people.

7 They wanted to understand more about really our
8 corporate philosophies, and our corporate policies and
9 procedures, and how we maintained them across, you
10 know, such a big organization.

11 And I remember that, you know, that there was
12 just a lot of back and forth of sharing information and
13 sharing -- and discussing certain areas that people
14 were feeling challenged about or feeling like they
15 needed more information about.

16 But it was definitely a meeting. It was more
17 than -- you don't bring those kinds of people together
18 just to say hi. It was a meeting where they wanted to
19 understand what this corporation was going to be doing
20 in California, especially as it got bigger and bigger.
21 And they talked about their concern about how big we
22 were getting.

23 Q. Did you during --

24 Did you have concerns about Emeritus adding even
25 more facilities to the California Division with the

1 acquisition of Sunwest when it was already having so
2 many problems in the division?

3 MS. BADAWIYA: Lacks foundation, it's
4 argumentative, assumes facts.

5 Q. BY MS. CLEMENT: Let me rephrase.

6 A. Okay.

7 Q. Did you have concerns for any reasons about
8 Emeritus bringing on more facilities with the
9 acquisition of Sunwest into California?

10 A. Yes, I was already concerned about the
11 properties I already had, so -- but California was
12 actually going to get the smallest number. My division
13 was actually getting the smallest number of the
14 Sunwest, so it was more of a concern for people in some
15 of the other divisions that were getting, you know, 30,
16 40 properties. I was only getting a handful.

17 But certainly I was concerned, not just about
18 additional properties, but this is a whole different
19 dimension. I had already gone through Sunrise
20 acquiring all of Marriott properties after I joined
21 Sunrise, so I had already been through when you merge
22 corporate philosophies, culture, policies, procedures,
23 pricing, et cetera, whether it's one property or a
24 thousand, you still have to go through all of that
25 work.

1 So, yes, I was concerned about on-boarding all
2 of those new people, but I was even more determined
3 then to get the training in place because they would
4 benefit from it. All of these new executive directors
5 I would be getting would be going through all of this
6 new training that I would be developing for the
7 executive directors that I already had.

8 Q. In your experience and training as a
9 vice-president of operations, you had gone through
10 other companies that had gone through acquisitions, as
11 you just referred to us, the Marriott acquisition by
12 Sunrise?

13 A. Yes.

14 Q. And was it your experience that when -- whenever
15 there is a new acquisition, it takes time away from the
16 job duties of the people at the regional and divisional
17 level to on-board and integrate those new acquisition
18 buildings into the existing structure?

19 MS. BADAWIYA: It's an incomplete hypothetical,
20 it assumes facts that haven't been established, it's
21 beyond the scope of this witness' ability to testify.

22 THE WITNESS: In the cases of Sunrise where my
23 regions were actually getting a new property -- because
24 not every one of the regions would get a property from
25 Marriott into their region. So the ones that did not

1 get a property into their region, was business as
2 usual.

3 The ones that did get new property or two or
4 three into their region, that's all they had time to do
5 was to on-board those three. And because -- they had
6 to basically, at a relatively short time period, to
7 transition them to all of the Sunrise protocols,
8 billing methods, benefits for the staff.

9 So, yes, it was very time-consuming if you were
10 a regional who had to integrate those communities. And
11 it was incredibly difficult for the person who was
12 divisional level who was getting some or many
13 communities to integrate.

14 Q. BY MS. CLEMENT: Did you learn the history of
15 Emeritus with your own on-boarding process and how it
16 had grown since it first started in 1993?

17 MS. BADAWIYA: It's vague as to history, it's
18 overbroad, it's unintelligible, calls for speculation,
19 lacks foundation.

20 THE WITNESS: I knew about Emeritus from
21 certainly being in the industry participating in ALFA
22 and CALA. When I was at Sunrise, Emeritus was a much
23 smaller company, and I certainly knew about its merger,
24 acquisition of Summerville. Several of my employees
25 from Sunrise went to Summerville and then were observed

1 into Emeritus.

2 When I was doing my due diligence about what
3 company I might go work for next, I -- I spent a good
4 amount of time with Joel Goldman, who was a lawyer at
5 Hanson Bridgett that I worked very closely with at both
6 Sunrise Senior Living, Northern California
7 Presbyterian, and he worked with Emeritus, as well.
8 And so he had a lot of history with both Summerville
9 and Emeritus, and so I got a very good sense of their
10 history from my lunches and meetings with Joel.

11 Q. BY MS. CLEMENT: And was it your understanding
12 from meetings that you had with Dan Baty, and
13 Granger Cobb, and Chris Hyatt, and people at the senior
14 executive level, that it was Emeritus' goal to be the
15 largest long-term care provider in the world?

16 A. Absolutely.

17 Q. And who did you hear that from?

18 A. I heard that from Chris Hyatt, and I certainly
19 heard it from Dan Baty.

20 Q. And was it your understanding from your
21 discussions with Dan Baty and Chris Hyatt is that the
22 way Emeritus was becoming the largest long-term care
23 provider in the world was through acquisitions of
24 distressed properties throughout the country?

25 A. I knew that before I went there, but I certainly

1 had that reinforced when I was there.

2 Q. What does that mean "distressed properties"?

3 You can --

4 MS. BADAWIYA: Calls for speculation, it lacks
5 foundation.

6 THE WITNESS: A company -- I'll just say senior
7 living, a company like, say, I'll compare Sunrise to
8 Emeritus.

9 Sunrise started as an owner/operator. So it
10 started by looking for property, and then it designed a
11 building, it built a building, it owned the building,
12 it ran the building, it was an owner/operator all the
13 way through. And it changed over time to more of this
14 model where it became an operating company and someone
15 else owned the real estate.

16 But all of the properties that Sunrise ran, up
17 until it got the Emeritus properties, were primarily
18 ones that were --

19 Q. BY MS. CLEMENT: We need to start that over.

20 A. Oh, I'm so sorry.

21 Q. I think you said Sunrise instead of Emeritus.

22 A. I do have a problem with that sometimes.

23 Q. Let me ask the question again.

24 What was your understanding of how Emeritus grew
25 its business?

1 A. Emeritus was an acquisition-based growth
2 strategy, merger, and then acquisition of small
3 portfolios of companies and large portfolios.
4 Summerville and then Sunwest were large acquisition
5 portfolios, and then there were and continued to be a
6 number of onesy, twosy, or fivesy, sixsy portfolios of
7 what we'll call distressed, existing senior living
8 properties that they --

9 They have a whole development and legal team
10 that go out and analyze as to whether or not the price
11 for that set of properties or property on a per-unit
12 basis to buy it is one where they can flip -- turn it
13 around -- buy it, turn it around, and make money on it
14 relatively quickly if they add it to their own
15 portfolio.

16 Q. Was it your understanding that -- or strike
17 that.

18 Did you feel pressure to meet the operating
19 margins that Emeritus set for the California Division?

20 MS. BADAWIYA: It's overbroad, assumes facts,
21 lacks foundation, it's an incomplete hypothetical.

22 THE WITNESS: Of course, any time you have a
23 financial metric and you have a very challenged -- any
24 time you have a financial metric, you feel stressed to
25 hit it. I had a very distressed division with a lot of

1 problems and a pretty high nut. And I also knew that
2 all eyes were on California because we were keeping the
3 stock price down. That was made clear to me.

4 So, yes, in one part it was a challenge that I
5 welcomed, and another part it was yikes.

6 Q. BY MS. CLEMENT: Was it your understanding from
7 your meetings at the senior management level and your
8 due diligence that Emeritus had over \$2 billion in debt
9 on its acquisition of assisted living facilities and
10 communities around the country?

11 MS. BADAWIYA: Calls for speculation, lacks
12 foundation.

13 MR. WELCH: At the time she was there employed?

14 MS. CLEMENT: Yes.

15 THE WITNESS: I can't say that I knew what the
16 debt level was, no.

17 Q. BY MS. CLEMENT: When you say you knew that
18 California was keeping the stock price down, how did
19 you learn that?

20 A. I learned it in the two-day meeting when I --
21 before I started when Dan Baty called my organization a
22 shit hole.

23 In that meeting, you know, we really talked
24 about how -- how they can help me get my numbers up.
25 They were all going to do whatever it took to help

1 California because as California went, so went
2 Emeritus.

3 Q. And was there a strategy for increasing the
4 revenue in California that was presented to you at the
5 corporate level?

6 A. We certainly -- that was a huge topic of
7 discussion with my own boss and with the head of Sales.
8 So, yes, of course, revenue -- it's easier to grow
9 revenue usually than cut labor or cut expenses. So
10 there was a huge amount of focus on many of the
11 elements of revenue, and the big part of that was the
12 unbundled pricing issue that I brought up, so we spent
13 quite a bit of time on that.

14 Q. And in terms of the strategy to grow revenue
15 that you were directed to enforce by corporate, did
16 that include increasing occupancy?

17 A. Absolutely.

18 Q. Did it include increasing the acuity or level of
19 care of the residents that Emeritus would accept and
20 retain?

21 A. What it -- what it required was that we had
22 budgeted levels of revenue, and the budgeted levels of
23 revenue were broken down into rent revenue, move-in
24 fee -- I'll go from the highest to the -- rent revenue,
25 level of care charges, move-in fees, and ancillary

1 charges.

2 So you had a budget by community, and you had a
3 budget by region, and a budget by division of what
4 those numbers should be rolling up to. And so you know
5 as a division vice-president of Operations that what
6 drives those are occupancy, filling the building as
7 much as I can; getting the best rate for each unit that
8 you possibly can; making sure that everyone who is in
9 the building is getting their annual increases; making
10 sure everybody in the building is getting reassessed,
11 so when their care needs go up, you're immediately on
12 that, meeting with the family, getting them -- their
13 billing increased for the care. And so level -- so a
14 lot of that is on occupancy.

15 And level of care charges is going to be a
16 combination of the folks that are already in there
17 making sure that everything that we're providing them
18 is billed for, and you want to make sure that you're
19 getting people that need the highest levels of care
20 because that's going to grow your level of care
21 revenue.

22 So it's a function of the number of people in
23 the community, and the amount of care that they're
24 getting billed for -- and then whether you can get
25 move-in fees from them because that was often something

1 from a competitive standpoint that you ended up
2 waiving, but they didn't want you to waive that because
3 it was kind of -- it was money that dropped right down
4 to the bottom line because move-in fee doesn't have any
5 expenses against it. So if you got \$25,000 as a
6 move-in fee from a couple, that went right down to net
7 operating profit.

8 Q. What about increasing the memory care unit
9 occupancy, was that part of the strategy to grow
10 revenue?

11 A. Yes, memory care was I think a relatively new
12 focus for Emeritus a year or so before I got there.

13 And when I got to Emeritus, they were very much
14 in the place of putting sales plans in place to -- and
15 marketing collateral materials in place to roll out for
16 marketing to people that needed dementia care services.

17 We had a number of properties that were already
18 dementia care, like the Roseville property that I
19 mentioned to you. We had a number of those kinds of
20 buildings in my -- in California. And we had a number
21 of -- of course, all of the rest of our buildings had
22 assisted living, and if they didn't already have memory
23 care in them, we were carving out and creating new
24 Memory Care Neighborhoods within an all assisted living
25 buildings for two reasons.

1 One, because memory care is a need-based
2 business, and it's a growing. Anyone who reads about
3 Alzheimer's and the growth of dementia and Alzheimer's
4 and our aging population knows that that's a growing
5 need, and it's also a very expensive set of services
6 that people that have dementia generally have a high
7 need for care so that has -- you know, it's a
8 highly-marketable service with a very good margin.

9 Q. As part of the strategy at the corporate level
10 to improve the operating margin, was the other piece,
11 besides growing revenue in those three ways you've
12 described for us, to reduce expenses?

13 A. Absolutely, absolutely. In any company you have
14 to manage both the revenue, and you have to manage the
15 expenses.

16 And in senior living, as I mentioned earlier,
17 labor is the number one highest controllable at the
18 community level expense.

19 Q. And did you have concerns that you raised with
20 your boss, Chris Hyatt, the senior vice-president of
21 Operations, about cutting the labor further than it had
22 already been cut in California?

23 MS. BADAWIYA: Asked and answered.

24 THE WITNESS: Yes.

25 Q. BY MS. CLEMENT: And did you communicate with

1 Mr. Hyatt concerns that you had about the labor budget
2 that he was proposing in an e-mail to him on
3 February 22nd, 2010?

4 MS. BADAWIYA: What exhibit are you looking at?

5 MS. CLEMENT: 394.

6 THE WITNESS: Yes.

7 Q. BY MS. CLEMENT: And --

8 A. I think this was in response to something he
9 sent me.

10 Q. I think that's on page --

11 A. It says on the bottom something he sent on the
12 same day.

13 Q. I think that's shown on page 116, Mr. Hyatt's
14 e-mail to you. It's two pages down further.

15 A. Oh, I see they are numbered. Yes, yes.

16 Q. And can you explain for us what your concern was
17 regarding Mr. Hyatt's proposal for the labor budget for
18 2010?

19 A. This was the exact same issue, in fact, it
20 was -- you know, it all went through the same thing,
21 the same training issue, the same -- so Chris was busy
22 working with Finance, which is Martin Roffe and David
23 Finden, on all of the budgets for the following year at
24 the divisional level. And so he had looked at what
25 Finance came up with for budgets at the macro level and

1 was kind of --

2 Finance comes up with the budgets based on, you
3 know, previous years and run rates, et cetera, and they
4 give that over to Chris Hyatt, who is the head of
5 Operations, and then he kind of looks at it and scrubs
6 it, and then gets our input at a macro level. And then
7 we go down to the regional and community level. And
8 after we've agreed at the top line number, we go down
9 and make sure that all of our lower level numbers then
10 roll up to what's he's agreed with in Finance that the
11 divisional level will deliver.

12 So in this e-mail he was sending to us, they
13 were looking at the labor budgets at the divisional
14 level. And so Chris was sending to each one of us what
15 he thought we should use as the best benchmark for our
16 labor budgets in 2010 based on numbers that he was
17 looking at from 2009 and conversations he had with
18 Finance.

19 Q. And what was your concern with regard to the
20 budget that Mr. Hyatt was proposing for labor after he
21 met with the Finance people?

22 A. So I joined in Q4 '09, and in Q3 '09 what Chris
23 was proposing is that all of the actual labor that we
24 incurred as a division, in the West Division, all of
25 third quarter labor would be what we would use for our

1 first quarter labor budget in 2010.

2 And he was asking for my feedback, as well as my
3 peers, on their question on what we thought of his
4 assumption.

5 Q. Now, let me ask you a question.

6 Was Mr. Hyatt saying to you he wanted to use as
7 the budget for the first quarter of 2010 for the labor
8 budget for California Division the actual amount of
9 money that was spent in the third quarter of 2009 for
10 the California Division?

11 MS. BADAWIYA: That misstates her testimony,
12 counsel. You're putting words in her mouth. You're
13 leading. You've been leading her on all of this.
14 You're trying to answer her question. You don't like
15 her response, so you're rephrasing it. It's
16 ridiculous.

17 MR. WELCH: We don't need speaking objections.
18 Let's make an objection; proceed.

19 Q. BY MS. CLEMENT: Just trying to get in lay terms
20 what this means, so --

21 A. He's talking about hours.

22 Q. Okay.

23 A. Dollars, basically. Basically, yes. So he's
24 looking at a macro level --

25 Q. Let me ask you a question.

1 A. Yes.

2 Q. Can you tell me in lay terms --

3 A. Yes.

4 Q. -- what Mr. Hyatt was asking you to do with
5 regard to coming up with a labor budget for the first
6 quarter of 2010?

7 MS. BADAWIYA: Calls for her -- calls on her to
8 speculate on his state of mind, lacks foundation.

9 MS. CLEMENT: I'll rephrase.

10 Q. What did Mr. Hyatt say in his e-mail to you,
11 expressed in lay terms, about what he wanted the labor
12 budget to be in 2010?

13 A. He's specifically saying to me that he would
14 recommend the following for 2010 for the West Division.
15 He said he would propose or recommend that we use 2009
16 Q3 budget for each quarter in 2010, not just for first
17 quarter, but for all four quarters in 2010.

18 Q. What does that mean "Q3"?

19 A. The third quarter of 2009, so that would be
20 July, August and September. So what we spent on labor
21 in July, August, and September of 2009, would be the
22 same budget we would use each quarter in 2010.

23 Q. And what was your concern with regard to that
24 proposal?

25 A. My huge concern was that 2009, we had such

1 understaffing that our actual labor in third quarter
2 was not representative of what we were going to be
3 spending in 2010 because I was trying to fill all of
4 those open positions. So there was no way that I
5 thought that was a good proxy.

6 And I suggested to him in this e-mail that I was
7 doing a reconciliation with my finance person to come
8 up with a better number.

9 Q. What does the phrase, "Book the gain" mean?

10 A. "Book the gain" or "book the savings", it
11 basically means if you had savings from being
12 understaffed or not having spent money on a certain
13 line item, that you were going to assume that same
14 savings going forward.

15 Q. In your tenure at Emeritus, did you ever hear
16 complaints about the facilities from referral sources
17 that Emeritus had?

18 A. Yes.

19 Q. And can you describe for us any complaints that
20 you heard from Emeritus referral sources?

21 A. As part of -- A Place For Mom is a very big
22 referral service in this industry. It's a particularly
23 big one for Emeritus.

24 And as I mentioned earlier, I was in an open
25 house at Citrus Heights. It was an industry open

1 house. We had done a lot of improvements to the
2 community in Citrus Heights, and they were doing a
3 reopening, kind of a party for the industry, including
4 all of the referral sources so that they could see all
5 of these great changes so that they would refer to us.

6 So I had just come from Roseville, where I had
7 the employee commitment meeting and where I had the --
8 you know, conversations with the executive director,
9 and where I was looking at why this building is so
10 empty of -- its occupancy was so low.

11 And so from there, I went directly over that
12 afternoon to the Citrus Heights community. And at the
13 Citrus Heights community was talking to the regional
14 representative for A Place Called Mom -- A Place For
15 Mom. I believe his name was Dale Masters, and I asked
16 him, as I was meeting and greeting the referral
17 sources, and knowing he was the biggest one for that
18 region, and I had so much open supply in Region One, I
19 asked him -- you know, he was very positive about the
20 changes in Citrus Heights.

21 I said, "Do you also refer to Roseville?"

22 And he said, "I would never refer to that
23 community."

24 And I was kind of taken back, I said, "What do
25 you mean?"

1 He said, "I think that is an incredibly poorly
2 run, understaffed organization, and I would never refer
3 anyone into that community."

4 Q. Did you share what you learned from A Place For
5 Mom referral source with your colleagues at Emeritus?

6 A. I was standing there with several of my
7 colleagues who heard it. I don't recall if I -- if I
8 had a chance after that event to actually share it. I
9 would imagine I would because I was pretty shocked, but
10 I can't say I remember specific people I talked to.

11 Q. Did you learn in the course of your tenure at
12 Emeritus that there was a turnover problem at the
13 community level with the care staff?

14 A. Absolutely, yeah. Care staff are -- again,
15 industrywide turnover in line staff in a for-profit
16 assisted living is very high, and we had a particularly
17 high turnover in care staff, as well.

18 Q. So Emeritus had high turnover in their care
19 staff in California?

20 A. Yes.

21 Q. What did you understand from the executive
22 directors that you met with as to what they were being
23 told to do with regard to improving their staffing
24 expenses, other than just cutting staff by 10 percent?

25 A. Well, again, as I mentioned earlier, a big part

1 is making sure that you're not using overtime or using
2 it very, very judiciously.

3 Another is that you try to use part-time instead
4 of full-time because you don't always need an
5 incremental eight-hour person to handle peak times, so
6 using part-time is always a driver.

7 The other was that we obviously not use any
8 registry because registry -- you can get registry for
9 nurses and you can also get personal care, home care
10 kind of people to come in also, and that's absolutely a
11 no-no.

12 I'm sorry, could you repeat the question? I
13 just --

14 Q. That's all right.

15 A. I need some more coffee.

16 Q. What did the EDs that you worked with at
17 Emeritus tell you that they were being told to do to
18 cut staffing, other than just straight 10 percent?

19 MS. BADAWIYA: Calls for hearsay, assumes facts,
20 it lacks foundation, it's leading.

21 THE WITNESS: Oh, well, a big one is always
22 sending people home. When you feel that you don't
23 really need them, to offer people to go home. I think
24 that's probably -- other than, you know,
25 across-the-board cuts, which is up to them to figure

1 out where they want to cut it.

2 THE REPORTER: Is this a good time for a break?

3 THE VIDEOGRAPHER: This ends tape number three
4 of today's deposition. We're going off the record at
5 3:50 p.m.

6 (Break taken in proceedings.)

7 THE VIDEOGRAPHER: We are on the record at
8 4:00 p.m. The date is August 29, 2012. This begins
9 tape number four of the deposition of Susan Rotella.

10 Q. BY MS. CLEMENT: At Emeritus were you familiar
11 with the Comprehensive Process Reviews called CPRs?

12 A. Yes.

13 Q. Did you understand those were the audits
14 Emeritus did to measure quality of the services they
15 were providing to the residents?

16 A. Yes.

17 Q. And in your tenure there, were there any
18 concerns about getting the Comprehensive Process
19 Reviews completed that were expressed to you?

20 A. Yes.

21 Q. And what were those concerns?

22 A. They were very time-consuming. They were very
23 comprehensive. They required all functional areas to
24 be available at the community level, regional level,
25 and sometimes even divisional level. And they were

1 scheduled usually in advance of -- I think there was
2 usually an annual schedule.

3 So, of course, when it was time to do a number
4 of the CPRs, there would be issues ongoing, whether it
5 was they didn't have an ED, or they didn't have a
6 nurse, or they just didn't have time to get all of the
7 people together. So it was -- it was another burden.

8 MS. CLEMENT: Thank you.

9 THE VIDEOGRAPHER: Going off the record at
10 4:01 p.m.

11 (Break taken in proceedings.)

12 THE VIDEOGRAPHER: We are back on the record at
13 4:02 p.m.

14 EXAMINATION BY MS. BADAWIYA

15 Q. Good afternoon, Ms. Rotella. I'm going to try
16 to be as quick as possible and move through things, but
17 I do have a number of things.

18 Now, today you're here and you're represented by
19 Mr. Michael Welch, correct?

20 A. Yes.

21 Q. And Mr. Welch is your attorney in the wrongful
22 termination suit you have against Emeritus?

23 A. Correct.

24 Q. And you -- let's see.

25 That lawsuit against Emeritus was filed on

1 June 18, 2010; is that correct?

2 A. Sounds about right.

3 Q. It's currently pending, correct?

4 A. I would have to refer that to my attorney. I

5 don't know what pending means.

6 Q. Okay. Let me clarify. And if you don't

7 understand one of my questions --

8 A. Okay.

9 Q. -- please just tell me and I'll rephrase it.

10 A. Okay.

11 Q. Because I'm going to assume you understand every

12 question if you give me an answer.

13 A. Oh, okay.

14 Q. The case has not been settled, correct?

15 A. Correct.

16 Q. And the case has not been tried in a courtroom

17 yet?

18 A. Yes.

19 Q. That's correct?

20 A. Correct.

21 Q. And let's see, prior to coming here today and

22 providing testimony, had you previously met with

23 Mrs. Clement?

24 A. Yes.

25 Q. And had you -- I know that prior to your

1 attorney arriving this morning, you had an opportunity
2 to meet with Mrs. Clement; is that correct?

3 A. Yes, in here for a few minutes, yes.

4 Q. And what did you discuss with her when you were
5 meeting with her in here?

6 A. She introduced me to her staff. We talked --
7 the court reporter and I talked about how I had
8 remembered her because I had been deposed once before
9 by Ms. Clement in another matter back when I was -- had
10 been with Sunrise. We talked a lot about the video
11 process and joked about that. We talked about where
12 was Michael. I don't really think -- I told her that I
13 met you out in the lobby, that I didn't realize that
14 you were the attorney, but I had introduced -- I
15 didn't -- maybe I did introduce myself. We had spoken
16 in the lobby, and really that was it.

17 Q. Right. When we met in the lobby, one of the
18 attorneys, I believe that I don't recall his name. One
19 of the attorneys -- we're in the Law Offices of Supple,
20 and I believe one of the attorneys from that law firm
21 assumed that you were my witness, correct? And I
22 clarified that for him.

23 MR. WELCH: I'm going to object. That calls for
24 speculation as to what somebody else assumes and lacks
25 foundation.

1 MS. CLEMENT: How is it relevant to the lawsuit?

2 Q. BY MS. BADAWIYA: Just for the record, I

3 volunteered who I was to the attorney that when we met

4 in the lobby, correct?

5 MR. WELCH: Object.

6 THE WITNESS: I don't remember.

7 Q. BY MS. BADAWIYA: That's fine. That's fine.

8 A. I'm sorry.

9 Q. We will move on.

10 When you have said Ms. Clement introduced you to

11 her staff, what do you mean "her staff"?

12 A. The folks that are with her today to be the

13 court reporter and the videographer.

14 Q. Okay. Anybody else that you recall?

15 A. I don't think so.

16 Q. And you said that Mrs. Clement had previously

17 deposed you --

18 A. Yes.

19 Q. -- when you worked for Sunrise?

20 A. It was on a Sunrise case. It was after I had

21 left Sunrise.

22 Q. It was a Sunrise case where Ms. Clement was

23 suing Sunrise for allegations of elder abuse and

24 neglect, things of nature, if you know?

25 MR. WELCH: Object, it calls for a legal

1 conclusion, it lacks foundation.

2 THE WITNESS: Yes.

3 Q. BY MS. BADAWIYA: Yes, that's what she deposed
4 you about?

5 A. Yes, yes, that's true.

6 Q. And how long ago did you give the deposition to
7 Ms. Clement?

8 A. I was working at the time at Northern California
9 Presbyterian where I worked from 2006 to the end of
10 2008. I believe it may have been in 2007. I think it
11 was somewhere in the middle of my tenure there.

12 Q. Okay. At the time you gave the deposition, do
13 you recall the name of the attorney that defended you
14 during that deposition?

15 MR. WELCH: Object, it lacks foundation as to
16 whether there was a defending attorney.

17 THE WITNESS: No, I don't.

18 Q. BY MS. BADAWIYA: Was there an attorney or was
19 there not an attorney?

20 A. There was an attorney, yes.

21 Q. It was an attorney for Sunrise, if you recall?

22 A. You know, I actually mixed -- I was mixing it up
23 with another case that I thought was the one I had met
24 Ms. Clement at. And it turned out it was a totally
25 different case, so I'm not mixing the lawyers up.

1 So I think that was an external law firm as --
2 that was there representing me on behalf of Sunrise,
3 yes.

4 Q. And this was sometime in 2007?

5 A. Yes.

6 Q. Do you remember the name of the resident that
7 was the plaintiff in that case?

8 A. I just remember -- I believe her first name was
9 Mary, but I didn't know the resident, so.

10 Q. And which Sunrise community did it involve, if
11 you recall?

12 A. Danville.

13 Q. In California?

14 A. Yes.

15 Q. How many times --

16 Prior to today, how many times have you given a
17 deposition?

18 A. I believe twice.

19 Q. And both times was it while you worked for
20 Sunrise or related to that?

21 A. Yes.

22 Q. And if I understand your testimony, once it was
23 Ms. Clement who deposed you, and then once it was
24 somebody else?

25 A. Yes.

1 Q. Do you recall the name of the other attorney
2 that deposed you or the law firm?

3 A. No. It was an employment case. It wasn't a
4 resident case.

5 Q. Okay. Why did you leave Sunrise, ma'am?

6 MR. WELCH: Object that it lacks foundation,
7 argumentative, calls for speculation.

8 THE WITNESS: For several reasons. Number one,
9 I didn't feel that there was a tremendous amount of
10 additional challenge for me. There was more
11 responsibility but not more challenge. Once you've
12 managed 20 communities or 40 communities, getting
13 another 40 really is not incredibly challenging.

14 So after two-and-a-half years and after being
15 offered several opportunities for promotion to move to
16 Virginia, where I decided I never wanted to live, I
17 thought that, you know, it was time to look for another
18 job. And I gave my boss, I think, nine months' notice.

19 Q. BY MS. BADAWIYA: Who was your boss at the time?

20 A. Cindy Musikantow.

21 Q. Are you currently employed?

22 A. Yes.

23 Q. Who with?

24 A. I'm an independent consultant.

25 Q. And what do you consult about?

1 A. I consult with C level managers in senior living
2 companies, and I consult in really a host of marketing,
3 programing, and operations issues.

4 Q. Okay. You said prior to today you had
5 previously met with Ms. Clement?

6 A. Yes.

7 Q. How many occasions have you met with her?

8 A. Once.

9 Q. Okay. And where was that meeting held?

10 A. We met at my home.

11 Q. Do you have an estimate for us as to when that
12 meeting occurred?

13 A. I think it was -- we started late morning, 11:00
14 or so.

15 MR. WELCH: I can't tell you.

16 THE WITNESS: I'm sorry. He was there. My
17 attorney was present. So it was around eleven o'clock
18 or so.

19 Q. BY MS. BADAWIYA: Eleven o'clock.

20 What I'm getting at more specifically was an
21 actual date that you met. Was it yesterday or
22 previously?

23 A. Oh, I'm sorry, I thought you said yesterday.
24 I'm sorry, yesterday.

25 Q. Was that the only time that you met with

1 Ms. Clement?

2 A. Yes.

3 Q. And how long did you meet with her?

4 A. As I said, we started probably somewhere around
5 11:00 and went most of the day.

6 Q. And did you discuss with her the contents of
7 what your deposition would be about?

8 MS. CLEMENT: Object.

9 MR. WELCH: I'm going to -- to the extent that
10 it involves any discussions in which I was present, I'm
11 going to object on the basis of attorney/client
12 privilege and joint interest privilege and instruct her
13 not to answer.

14 MS. BADAWIYA: Right.

15 MR. WELCH: If it's outside of my presence.

16 Q. BY MS. BADAWIYA: Right. And counsel is
17 absolutely right, I'm sorry. I don't want to know
18 about any discussions you discussed with Ms. Clement
19 while your attorney was present. I'm not entitled to
20 that.

21 A. Okay.

22 Q. But if he was not present, during those times
23 that you talked to her, I'm entitled to know what you
24 guys discussed.

25 A. He was there for the entire time except when he

1 went out for lunch, to pick up our lunch.

2 Q. And during that time, what did you discuss with
3 Ms. Clement?

4 A. I think it was just -- I think we took a break.
5 I think we were just waiting for the lunches, and we
6 just talked generally. And we may have talked about --
7 I was trying to get documents that I had been
8 subpoenaed for organized, and so I was probably just
9 getting those together and stacking them up and trying
10 to decide if I needed to Xerox them.

11 Q. Okay. So as you sit here today, it's your
12 testimony that you did not discuss anything of a
13 substantive nature with Ms. Clement regarding the
14 testimony that you've given today?

15 A. During the time that Mr. Welch was not there?

16 Q. Yes.

17 A. Not that I remember, no.

18 Q. Do you remember any other occasions where you
19 might have spoken to either Ms. Clement or anybody
20 associated with her office, including a private
21 investigator, and your attorney was not present?

22 A. Yes. We had exchanged a couple of phone calls,
23 and that's probably, let me see, how many would there
24 have been? I think early on after she found my
25 lawsuit, when she found me and recognized my name

1 from -- we had a couple of just conversations was I
2 that person.

3 Q. Okay. So at some point Ms. Clement reached out
4 to you via the phone and made you aware that she had
5 learned about your lawsuit?

6 A. Yes.

7 Q. And when you say lawsuit, you're talking about
8 the wrongful termination lawsuit that you have against
9 Emeritus?

10 A. Yes.

11 Q. So she called you and said what specifically to
12 you during that first conversation?

13 A. Oh, God -- you know, I could speculate on what
14 we talked about. I can't tell you specifically that I
15 recollect. I mean she called --

16 MR. WELCH: Just so you know, I don't know --
17 since there were no admonitions given at the beginning,
18 I know counsel doesn't want you to guess. If you can
19 recall, she wants you to tell what you can recall, but
20 she doesn't want you to speculate or conjecture.

21 Q. BY MS. BADAWIYA: I don't want you to guess, but
22 I'm entitled to your best estimate. Even if you have a
23 vague recollection of the conversation, I'm entitled to
24 that recollection.

25 A. Really, we talked about my deposition -- my

1 lawsuit that I -- that she had seen my lawsuit that I
2 was -- that she had a case against Emeritus, and that
3 she remembered me from a prior deposition. I
4 remembered her name, and that at some point in the
5 future I would be deposed.

6 Q. Did she tell you about the case that she had
7 against Emeritus?

8 A. At that time?

9 Q. Yes.

10 A. I just knew it was an elder abuse case.

11 Q. She didn't share any of the specific allegations
12 in that case?

13 A. What she shared with me was that it was
14 California, and probably the community that it was
15 and -- yeah, I'm sure that she told me that it was
16 related to sores, ulcers.

17 Q. Anything else you recall her telling you about
18 the case?

19 A. Just that it was probably going to be -- that
20 she would probably be deposing the same people that I
21 would be deposing.

22 Q. In your lawsuit has anybody been deposed if
23 you're aware?

24 A. No.

25 Q. And I believe you told me that you had a couple

1 of conversations with Ms. Clement. Do you recall what
2 the date was of the first conversation --

3 A. Oh, gosh.

4 Q. -- that you had with her?

5 A. No, I'm sorry.

6 Q. Was it --

7 Keeping in mind that your lawsuit looks like it
8 was filed June 18th, 2010.

9 A. Yes.

10 Q. Can you estimate for us how much time had
11 elapsed after the lawsuit was filed that you first
12 spoke with her? And if you can't, that's fine.

13 A. I really can't.

14 Q. And then you did have a subsequent conversation
15 with Ms. Clement?

16 A. I can't remember if it was a conversation or
17 just an e-mail that I was going to be getting a
18 subpoena.

19 Q. Have you had any e-mail correspondence between
20 yourself and Ms. Clement?

21 A. Yes.

22 Q. Can you estimate for us how many e-mails between
23 both of you?

24 A. No, no.

25 Q. Okay. Was it -- is it more than five?

1 MR. WELCH: Object, calls for speculation, asked
2 and answered.

3 THE WITNESS: I don't -- I don't remember. I
4 don't think so.

5 Q. BY MS. BADAWIYA: Do you still have those
6 e-mails?

7 A. I hope not.

8 Q. Why do you say that?

9 A. Because I have so many thousands of e-mails, I
10 try to delete them.

11 Q. Other than telling you about this subpoena and
12 then e-mail, do you remember the contents of any other
13 e-mails that Ms. Clement may have sent you?

14 A. No, not that --

15 Oh, can I ask a question?

16 Q. Sure.

17 A. When you're referring to any conversations that
18 happened, is that -- does that mean with my attorney?

19 Does that include any conversations in whatever
20 forum where you were present?

21 MR. WELCH: From what I understood her question,
22 she asked before, she was talking about the phone
23 calls.

24 THE WITNESS: Right. Does that apply to e-mail?

25 If you were copied on a subpoena, does that mean

1 that I have to -- is that client/attorney privilege?

2 Q. BY MS. BADAWIYA: Right. I'm not -- I'm only
3 interested -- I appreciate you asking the question.

4 I'm only interested in, I'm only entitled to
5 conversations, whether it's over the phone or in person
6 or via e-mail, that you had with Ms. Clement where
7 Mr. Welch was not involved, was not cc'd.

8 A. I think Mr. Welch was probably cc'd or involved
9 in almost anything, other than my initial conversations
10 with Ms. Clement over our reconnecting.

11 Q. In the lawsuit where Ms. Clement deposed you and
12 you were -- you had previously worked with Sunrise, did
13 you provide supportive testimony with respect to
14 Sunrise if you recall?

15 MR. WELCH: I'm going to object. It calls for a
16 legal conclusion, calls for speculation, may also call
17 for expert opinion as to whether or not there was --
18 and support of her -- of the nature of the testimony
19 was.

20 MS. CLEMENT: My objection is the question is
21 vague.

22 THE WITNESS: I was just going to ask what
23 "supportive" means.

24 Q. BY MS. BADAWIYA: I mean did you support the
25 care that they provided. You indicated -- let me go

1 back.

2 You indicated to me that the lawsuit involved
3 allegations of elder abuse, correct?

4 A. I believe so, yes.

5 Q. And my question to you is you were --

6 At the time of this lawsuit, I take it you were
7 an employee of Sunrise?

8 A. Yes.

9 Q. And what was your role at that time?

10 A. Vice-president of Operations. I believe on
11 that -- the reason it was actually a rather -- a rather
12 short testimony because I was actually on my way out at
13 the time of the incident, and my replacement was
14 already in place, and I was transitioning with him, so
15 he was really the primary person deposed with the
16 information on it. So I believe my testimony was a
17 fairly short one.

18 Q. Do you know or do you recall as you sit here
19 whether you provided any criticisms of Sunrise during
20 your testimony?

21 MR. WELCH: Object as vague.

22 MS. CLEMENT: Join.

23 THE WITNESS: I think I was honest about the
24 realities of the environment that I worked in. Whether
25 that's considered critical or not, I would not define

1 it as such. I mean no company is perfect, and I'm sure
2 I shared, you know, what I believed and knew to be our
3 practice, just like I did today.

4 Q. BY MS. BADAWIYA: Today you're providing
5 testimony in a case called Boice versus Emeritus at
6 Emerald Hills, Ronda Castleberg, et al.; do you
7 understand that?

8 A. Yes.

9 Q. And if I understand your testimony, your
10 employment with Emeritus was in November 30th, 2009 you
11 were hired?

12 A. I believe so. That's my start date, yes.

13 Q. And I believe you testified that your
14 termination date was March 5th --

15 A. Yes.

16 Q. -- 2010?

17 A. That's correct.

18 Q. Okay. Do you have an understanding as to when
19 Ms. Boice resided at Emerald Hills?

20 MR. WELCH: Object, that lacks foundation, calls
21 for speculation.

22 THE WITNESS: I believe --

23 MS. CLEMENT: Object also to the question it may
24 involve attorney/client privilege information or
25 attorney work product. It was -- I mean I don't know,

1 just saying.

2 Q. BY MS. BADAWIYA: Let me ask you this.

3 A. Okay.

4 Q. Let's go back to something.

5 A. Okay.

6 Q. At any point has Ms. Clement represented you as
7 your attorney?

8 A. No.

9 MS. CLEMENT: That wasn't my objection. I was
10 just bringing up the fact that the communications have
11 occurred with her counsel present.

12 Q. BY MS. BADAWIYA: Okay. My only -- let me
13 try -- let me ask you this.

14 Did you know Ms. Boice?

15 A. No.

16 Q. Did you know her family?

17 A. No.

18 Q. Had you -- have you --

19 To this present date, have you ever spoken to
20 anybody that's -- any of the Boice family members?

21 A. No.

22 Q. While you were in the approximate three months
23 of employment that you were at Emeritus, did you ever
24 go to Emerald Hills?

25 A. No.

1 Q. I will represent to you that Ms. Boice was in
2 Emerald Hills in September of 2008 through December of
3 2008. Do you understand that?
4 A. I do understand that.
5 Q. And in that time frame, do you know where you
6 were working?
7 A. In 2008?
8 Q. Yes.
9 A. In that time frame, yes, I was an independent
10 consultant, and I was working with several clients.
11 Q. And in your role as an independent consultant,
12 during that time frame you never visited with
13 Emerald Hills, correct?
14 A. Correct.
15 Q. At any point up to the present date, have you
16 ever been to Emerald Hills?
17 A. No.
18 Q. During that same time frame, September of '08
19 through December of '08, did you ever meet
20 Ronda Castleberg?
21 A. No.
22 Q. Do you know who Ronda Castleberg is?
23 A. No.
24 Q. Other than Ms. Clement during that initial call
25 on the phone when she relayed to you that she had a

1 pending lawsuit against Emeritus, has anyone shared
2 with you the allegations that the Boice family is
3 making against Emeritus?

4 A. No.

5 Q. Did you ever read the complaint that the Boice
6 family filed against Emeritus?

7 A. No.

8 Q. In the three months or so that you worked for
9 Emeritus, in '09 through 2010, did you ever hear or
10 learn anything about the Boice residency at Emerald
11 Hills?

12 A. I have a vague recollection of a concerted
13 effort by Melanie Werdel, Janet McKinnon to secure
14 documents for a case that was in Emerald Hills, and
15 my -- just my recollection, I happened to be in
16 corporate when they were there, and they were searching
17 for documents related to a case that was at Emerald
18 Hills that seemed to be missing.

19 Q. So searching for documents related to a case in
20 Emerald Hills, and you said the documents seemed to be
21 missing?

22 A. Yes.

23 Q. Do you know which documents were missing?

24 A. It may have been resident file documents. They
25 were working with Quality Services. I think it was

1 with Lisa Hulse at the time. And, again, I don't know
2 what the name of the case was. I just remember they
3 asked -- they just informed me that, you know, they had
4 this effort underway and that they were working with
5 Lisa Hulse.

6 Q. And the effort underway to look for documents?

7 A. Yes.

8 Q. Do you know why they shared that information
9 with you?

10 MR. WELCH: Object, that calls for speculation.

11 THE WITNESS: You would have to ask them.

12 Q. BY MS. BADAWIYA: Okay. Was it your
13 understanding that you just happened to be in corporate
14 while they were looking for those documents, and they
15 made you aware of it; is that how it was conveyed to
16 you?

17 A. I was usually apprised of most lawsuits just in
18 general, just as the division vice-president, whether
19 they were employee lawsuits or if there was ongoing.
20 And I was just in corporate. I don't think they would
21 have called me.

22 Q. Okay. But as far as what you were apprised about
23 related to this lawsuit was just that they were looking
24 for documents?

25 A. Yes, and there was some frustration that they

1 should have been there and weren't.

2 Q. And when you say some frustration, you're saying
3 the frustration was expressed by Melanie Werdel and
4 Janet McKinnon?

5 A. Yes.

6 Q. Did it appear to you that they were trying hard
7 to find the documents?

8 A. Yes.

9 Q. Is that the only time that --
10 Is that the only time you've learned of a
11 lawsuit involving Emerald Hills?

12 A. That is correct.

13 Q. Now, prior to you filing the lawsuit that you
14 filed for wrongful termination against Emeritus, you
15 sent a demand letter to Emeritus; is that correct?

16 MR. WELCH: I'm going to object. It calls for a
17 legal conclusion, it misstates the record. She didn't
18 send it. Her attorney sent it.

19 THE WITNESS: I don't know what necessarily a
20 demand letter is.

21 Q. BY MS. BADAWIYA: Prior to -- let me ask you this
22 way. Fair enough.

23 Prior to you filing the lawsuit that your
24 attorney filed against Emeritus, do you know if your
25 attorney reached out to Emeritus and made any demands

1 on your behalf?

2 A. Yes.

3 MS. CLEMENT: You know, I'm going to have to --

4 MR. WELCH: Object. I'm going to object as
5 vague. Also I'm going to object we're getting into a
6 privileged settlement communication --

7 MS. CLEMENT: That's a privileged communication.

8 MR. WELCH: -- so I'm not going to let her
9 answer any further questions about it.

10 MS. CLEMENT: My objection would be it never
11 would be admissible at trial, so it's not likely to
12 lead to the discovery of admissible evidence.

13 MS. BADAWIYA: Counsel, I'm going to leave that
14 area of inquiry, so.

15 MR. WELCH: Okay.

16 MS. BADAWIYA: So the commentary is not
17 necessary.

18 MS. CLEMENT: Whose commentary?

19 MS. BADAWIYA: Yours.

20 MS. CLEMENT: Well, I actually do have a right
21 to make an objection on the record.

22 Q. BY MS. BADAWIYA: Did you read the wrongful
23 termination lawsuit that your attorney filed on your
24 behalf?

25 A. Did I read, yes.

1 Q. Okay. And when you read the lawsuit, did you
2 see that there was a certain amount of money that you
3 were requesting in that lawsuit?

4 MR. WELCH: Object, lacks relevance, calls for
5 speculation.

6 THE WITNESS: I read the entire letter.

7 Q. BY MS. BADAWIYA: The lawsuit, correct?

8 A. Yes. Oh, I'm sorry. I thought you meant the
9 settlement letter.

10 Q. No, I moved on. I was asking you about the
11 lawsuit.

12 A. Oh.

13 MR. WELCH: Well, I'm going to object that the
14 lawsuit --

15 MS. BADAWIYA: Is a public record, counsel.

16 MR. WELCH: You didn't let me finish.

17 MS. BADAWIYA: Okay.

18 MR. WELCH: I said it's vague and calls for a
19 legal conclusion. I don't know what a lawsuit is as
20 far as reading. But if this witness knows what you're
21 referring to, she can answer it.

22 MS. CLEMENT: I would further object, it lacks
23 foundation that the witness read the complaint. It
24 sounds like she read the demand letter.

25 MR. WELCH: No, I think we've established you're

1 not talking about the demand letter.

2 MS. BADAWIYA: No, I'm not talking about the
3 demand letter. Let me ask a different question.

4 MS. CLEMENT: From the witness' response --

5 MR. WELCH: Yeah, right.

6 MS. CLEMENT: -- it sounds like she read the
7 demand letter, and I don't think there has been a
8 foundation laid that she read the complaint.

9 MS. BADAWIYA: Fair enough.

10 MR. WELCH: That's what my objection went to as
11 to what you're talking about. You said -- mine as to
12 the lawsuit, rather than complaint.

13 Q. BY MS. BADAWIYA: I'm not going to ask you about
14 the letter that your attorney sent out, okay?

15 A. Okay.

16 Q. However, he did file what we call a summons and
17 complaint?

18 A. Okay, yes.

19 Q. Did you read the summons and complaint?

20 A. When it was filed, yes.

21 Q. Okay. And in the summons and complaint, you are
22 making a monetary demand. Do you understand that?

23 A. Yes.

24 Q. Okay. Do you understand what the amount is that
25 you're requesting?

1 A. I do not recall what it was.

2 Q. Does \$4 million sound about accurate?

3 MR. WELCH: Objection, asked and answered, that

4 calls for speculation. She said she doesn't recall.

5 THE WITNESS: I don't know what the amount was.

6 I'm sorry.

7 Q. BY MS. BADAWIYA: Okay. No problem.

8 Earlier in your testimony you talked about going

9 to a community in Southern California called the

10 Grand Terrace; do you recall that?

11 A. Yes.

12 Q. Okay. And you talked about an executive

13 director that was there that had previously been with

14 Sunrise?

15 A. Yes.

16 Q. What is her name?

17 A. Actually, it's in one of these.

18 Q. You can refer to one of the documents if you

19 want.

20 A. She was at the meeting, Lori Spencer, I believe

21 it was. She was at the meeting in Southern California

22 where I invited the executive directors.

23 Q. And with respect to your prior testimony about

24 the gentleman whose room there was nothing in it --

25 A. Yes.

1 Q. -- do you recall that testimony?

2 A. Yes, I do.

3 Q. You indicated that Ms. Spencer had taken care of

4 the gentleman and redirected him to another room,

5 relocated him, I guess, to another room?

6 A. Yes.

7 Q. And that the nurse that was involved with that

8 incident was fired by Ms. Spencer; do you recall that?

9 A. I did not --

10 MR. WELCH: Object, that calls for speculation.

11 I think that misstates testimony.

12 THE WITNESS: She was no longer with the

13 community. I don't know if she quit or she was fired.

14 Q. BY MS. BADAWIYA: Okay.

15 A. It had been previous to my employment.

16 Q. And Ms. Spencer was somebody you had previously

17 worked with at Sunrise?

18 A. No.

19 Q. And how is it that you knew that she was

20 previously with Sunrise?

21 A. She told me.

22 Q. When you were terminated in March of 2005, who

23 was the person or persons that terminated you?

24 MR. WELCH: Object as vague, object that calls

25 for speculation.

1 MS. CLEMENT: Did you say 2005?

2 MS. BADAWIYA: I'm sorry, I meant 2000 --

3 March --

4 MR. WELCH: '10.

5 MS. BADAWIYA: -- 2010, yes.

6 THE WITNESS: In the meeting where I was fired,

7 it was Christopher Hyatt and Liberty Stansberry was his

8 witness.

9 Q. BY MS. BADAWIYA: Do you recall where you were

10 when this meeting occurred?

11 A. Yes.

12 Q. Where was it?

13 A. I was in a conference room at a hotel where I

14 had just completed a team meeting with my entire

15 divisional team at the end of a three-day conference in

16 Seattle.

17 Q. Was that the -- I believe was that the Hyatt

18 hotel in Seattle, if you recall?

19 A. I think it was the Pan Pacific; is that a Hyatt?

20 Q. Do you recall the -- that three-day --

21 You said it was a three-day conference?

22 A. Maybe it was a Hyatt. Pan Pacific is where I

23 think we stayed when I was there for the two-day

24 meeting.

25 Q. So you think the conference was held at the

1 Hyatt?

2 A. It was at a big fancy hotel that had a lot of
3 conference facilities. They all look generic to me.

4 Q. Fair enough.

5 That conference that you attended, your
6 understanding was it was about a three-day conference?

7 A. It was. We arrived Monday night, and it was a
8 Friday -- did it start Tuesday night or was it -- it
9 was either Tuesday to Friday or Monday night to Friday.

10 Q. Okay. Do you recall what the name of that
11 conference was, the name Emeritus had given it?

12 A. Oh, I remember it had -- I would pick it out of
13 a multiple choice. I couldn't -- I couldn't do a
14 fill-in-the-blank.

15 Q. Okay. If I tell you it was Leadership Starts
16 With You, does that sound familiar?

17 A. Vaguely.

18 Q. Okay. What was your understanding of what that
19 conference was about?

20 A. It was the first conference that we as a company
21 had brought together all of the regional and divisional
22 teams from across the company in order to talk about
23 where we were going, and what our goals and objectives
24 were, and maybe sharing some best practices, having the
25 functional department heads from corporate share

1 presentations with us about their plans.

2 There was a -- kind of like an exhibit hall
3 where they had all of the functional heads, Marketing,
4 Sales, Finance, had a booth where we got to go in and
5 learn all about what they were -- what they were --
6 what they did.

7 Q. And it was your recollection that that
8 conference started on Monday, and it ended sometime on
9 Thursday or Friday if you recall?

10 MR. WELCH: Object, asked and answered,
11 misstates her testimony. She said is it was either a
12 Monday night or Tuesday.

13 THE WITNESS: My best recollection was I flew on
14 a Monday night, and it ended on a Thursday night, and
15 we flew home on a Friday.

16 Q. BY MS. BADAWIYA: Was your attendance required
17 during the entire length of that conference?

18 MR. WELCH: Object, it's vague.

19 THE WITNESS: I was expected to be at the
20 conference, certainly.

21 Q. BY MS. BADAWIYA: And what's your best
22 recollection as to -- I believe you testified it was
23 March 5th, 2010. And I'm not sure if that's a Thursday
24 or a Friday.

25 A. It was Thursday evening.

1 Q. Okay. So it was that Thursday evening that
2 Chris and Liberty met with you, and you were
3 terminated?

4 A. Yes.

5 Q. And what reason did they give you for your
6 termination, if you recall?

7 A. I was not a fit.

8 Q. Not a fit, is that what --

9 A. I was not a cultural -- I was not a fit with the
10 culture of the organization, or cultural fit, something
11 in that.

12 Q. So not a fit with the culture or not a cultural
13 fit, something around in that -- in that range?

14 A. Yes, something as ambiguous as that.

15 Q. And this was something that Chris Hyatt told you
16 or was it Liberty who made these statements to you?

17 A. Chris Hyatt.

18 Q. Do you recall Mr. Hyatt saying anything else to
19 you?

20 A. Many things.

21 Q. During that meeting?

22 A. Yes.

23 Q. Okay. What do you remember him telling you?

24 A. I would refer to my notes that I have
25 handwritten -- or actually typed notes that are quite

1 extensive that I wrote the next day and documented and
2 gave to my attorney.

3 But I can tell you that he asked me if I wanted
4 to resign, and I responded I didn't see what benefit it
5 was to me to resign.

6 I mean there was just so very much, I would
7 really prefer to defer to that document, but that was a
8 document my attorney has, so.

9 Q. Okay. That document that you're referring to,
10 the notes, did you ever provide that document to
11 Ms. Clement?

12 A. No.

13 Q. And as you sit here today, what do you recall --
14 what do you recall him saying during that meeting? And
15 I understand you want to refer to your notes.

16 A. Okay.

17 Q. But I'm entitled to whatever best estimate you
18 have of the -- your recollection of that meeting.

19 A. I recall he was very angry that I had not
20 reached out to him early on in the conference to say
21 hello to him and to seek him out.

22 I recall that he was very upset that instead of
23 calling him to tell him that I was not feeling well and
24 was going to miss a very casual dinner that evening, I
25 e-mailed him.

1 I recall specifically him telling me that unless
2 my heart was being ripped out of my chest, I should
3 have been able to call him. That will stick with me
4 for a while.

5 I remember him telling me that I had caused the
6 company all of this problem in having to pay a regional
7 director of Operations, Evan Granucci, a six-month
8 settlement because I had fired him, even though I did
9 not fire him.

10 Q. What do you mean by that, even though you didn't
11 fire him?

12 A. I had --

13 MR. WELCH: Objection, testimony speaks for
14 itself.

15 THE WITNESS: I had -- it's actually all in my
16 lawsuit. I had a performance conversation one-on-one
17 in private with a direct report of mine who was failing
18 miserably, and this was the day after the meeting with
19 DSS, the week before I was fired, to sit down and
20 review his performance with him. And I shared with him
21 my concerns about his suitability for the role and the
22 potential that we might want to talk about some other
23 options for him within the company.

24 Q. BY MS. BADAWIYA: And this gentleman's name was
25 Evan?

1 A. Granucci.

2 Q. Granucci.

3 After your conversation with him, did he stop
4 working for Emeritus, if you know?

5 A. After my conversation with him -- I was still in
6 Los Angeles, he went left on very pleasant happy terms
7 with me with us both having follow-up.

8 And then I understand from Liberty Stansberry
9 that he immediately called her, threatened a lawsuit,
10 and before the end of that day he was gone with a
11 six-month settlement.

12 Q. So during this meeting in Seattle with
13 Mr. Hyatt, he expressed to you that you'd caused the
14 company a problem with Evan's departure?

15 A. Yes.

16 Q. Anything else that you remember Mr. Hyatt
17 telling you during that conversation?

18 A. He really just continued to harp on the fact
19 that I was not a fit.

20 I just -- I asked him -- I asked him for
21 examples. I reminded him that he had told me how well
22 I had been doing, and I had nothing but positive
23 feedback from him until the week before, after the
24 meeting with Melanie Werdel and Liberty and DSS, and
25 that I didn't understand why I was being terminated.

1 Q. You said during this meeting the -- at some
2 point it came up that you had not been feeling well?

3 A. Yes.

4 Q. Okay. Do you recall exactly what the problem
5 was?

6 A. Yes. In the -- was it the first -- it was the
7 second full day of the conference, and the night before
8 I had started to feel poorly and had not been able to
9 sleep and had -- I just had a lot of stomach problems,
10 and so I hadn't slept very well. And so when I fell
11 asleep and got up the next morning, I still wasn't
12 feeling well.

13 I went to the conference, and I was feeling
14 increasingly poor. And I was sitting next to
15 Lisa Hulse, my counterpart, and it was -- I think it
16 was around 10:30, and I looked at the agenda, and there
17 was a pretty, I would say, non-high-level session that
18 was coming up, one that I felt that I would able to if
19 not miss totally, at least follow up with Lisa on what
20 I had missed. And it was right before lunch, and I
21 thought that I could maybe go lie down for a little
22 bit. And so I told Lisa that I was going to do that,
23 and I did.

24 Q. Okay. So when you say 10:30, was that 10:30 in
25 the morning?

1 A. Yes.

2 Q. And that would have been a Tuesday or a
3 Wednesday?

4 A. I think the conference began on Tuesday, so that
5 would have been, I believe, a Wednesday.

6 Q. Okay. And do you recall when you came back to
7 the conference that Wednesday?

8 A. Yes, I came back in the middle of lunch.

9 Q. And once you returned, did you stay throughout
10 dinner or did you leave again?

11 A. I stayed throughout the end of that day's
12 conference activities. Then there was a break for an
13 hour or so, and there was a very casual dinner at a
14 sports bar, stand up, finger foods, drinks. And that's
15 when I sent an e-mail to Chris Hyatt and let him know
16 that I was feeling poorly, that I had a tremendous
17 amount of backlog work, mostly e-mails related to the
18 fact that he had given all of Evan's responsibilities
19 to me after Evan left, and I had all of the paperwork
20 to process or e-mail to process online. And that my
21 hope was to make a dent in that and go to bed early and
22 feel better the next day, which was a very important
23 day of the conference.

24 Q. And the next day, that would have been a
25 Thursday, correct?

1 A. Yes.

2 Q. And did you attend the entire day of that
3 conference?

4 A. I did indeed.

5 Q. In the afternoon you had breakout sessions?

6 A. Yes.

7 Q. And what occurred during those breakout sessions
8 if you recall?

9 MR. WELCH: Object as vague.

10 THE WITNESS: Yes. We had a breakout session
11 that -- each division did. So the divisional CTM, so
12 in my case it would have been Lisa Hulse, and in this
13 case Ken Claire, who I had just brought in who used to
14 work for me in a prior life at Sunrise and had just
15 been hired, started that week at Emeritus.

16 So at lunch that day I sat down with Lisa and
17 with Ken, and I said, okay, we have a breakout session
18 today, and we have a couple of hours to discuss
19 something relevant for our team and for our future, so
20 we brainstormed what we could potentially do. And I
21 recall Lisa Hulse said nothing. And Ken and I did a
22 lot of brainstorming.

23 And since a big part of the conference talked
24 about what are like the big things that you can do to
25 effect big change, I said, okay, let's -- how about one

1 of the two topics would be about what are the big
2 initiatives that we can focus on to effect change.

3 And I believe the second one that I said was
4 since we're now, finally, the three of us a CTM team,
5 let's talk about how we can as a group, now that we are
6 complete at the division level, pull together as a
7 team. So we agreed those were going to be our topics.
8 And then we had the meeting and --

9 Q. BY MS. BADAWIYA: Did you facilitate the meeting?

10 A. Yes, I did.

11 Q. And who was at the breakout meeting?

12 A. Everyone in my division that was from my
13 organization, Operations; Lisa's organization, Quality
14 Services; and Ken Claire's new organization in Sales.

15 Q. And, I'm sorry, what was Ken Claire's position?

16 A. He was the new vice-president of Sales and
17 Marketing.

18 And in addition to that, my other direct reports
19 that were non-Operations, the functional heads, the HR,
20 the dining, the property management, the finance
21 attended, as well.

22 Q. When you say HR, was that Audrey Withers?

23 A. Yes.

24 Q. Was she present?

25 A. Yes, she was.

1 Q. Do you recall anything that came up with
2 Ms. Withers at that breakout session?

3 A. I do indeed. I recall that she was particularly
4 agitated. And as a person in HR, I was actually
5 surprised because I thought her role is to help us to
6 be cohesive, and she was -- she kept raising issues
7 around us not being a team, not being a team, and not
8 having enough meetings.

9 And I said, well, you know, we're here. We just
10 had a three-day meeting, and we're having a meeting now
11 to talk about how we come together as a team. We now
12 have a new vice-president of Sales, so I don't have to
13 do that job. So, you know, let's talk about it.

14 And what I particularly recall is that
15 Ken Claire who was sitting next to me leaned over at
16 the end of the meeting and he said, "Who is that?"
17 Pointing to Audrey.

18 And I said, "She's our head of HR."

19 And he said, "That is the most negative employee
20 I have ever met." Her behavior was so inappropriate.

21 Q. And when you say her behavior was inappropriate,
22 what specifically do you recall her doing?

23 A. She was -- her whole body language was very
24 negative, it was very challenging in a way that she had
25 never been before. And I -- I actually was surprised,

1 and she was all the way on the other side of the room,
2 and so I was almost across from her, and next to me was
3 Ken, and she -- it was almost like she had statements
4 that -- personally it felt like she had statements that
5 she had been primed to ask, I felt after the meeting.

6 Q. And what do you mean "primed to ask"? I'm
7 sorry.

8 A. I felt that she -- after I had been fired, I
9 started to feel that, uhm, maybe some of those comments
10 that she had made were maybe ones that she was coached.

11 Q. Okay. So you felt some of the statements that
12 she was making during the breakout session were
13 statements that other people asked her to make?

14 A. I felt that way. That was a feeling I had.

15 Q. Okay. And did anybody specifically tell you
16 that?

17 A. No.

18 Q. What kind of statements --

19 What kind of statements was she making?

20 A. "We are not a team." "We don't have enough
21 meetings." "We don't work well together."

22 All the things that an HR person -- I mean it
23 was fine to bring those things up, but it was the way
24 she brought them up, and it was very challenging as if
25 all of this was my fault. And I thought it was very

1 unusual as if she were mad at me.

2 And afterwards she came up to me at the end of
3 the meeting right before everybody left for dinner, and
4 she said, "I would really like to have a meeting where
5 we all come together where we have a -- a division
6 meeting."

7 And I just remember thinking, but didn't say it,
8 we just spent three days all together in a really good
9 meeting. We just spent three hours together. We spend
10 every Friday on the phone together for all-day meetings
11 on -- on -- I mean I spend more time on the phone with
12 Audrey on fixing personnel problems, filling open
13 positions, I -- I was just kind of shocked that she
14 didn't think that we spent a lot of time together.

15 And I said, "You know what, I think that's a
16 great idea. We're all together now." I said, "Why
17 don't you organize it?"

18 And she just said, "Oh, like I have time to do
19 that?" And walked out.

20 And I'm thinking -- and Ken was overhearing
21 this, and I just -- I remember thinking that was
22 insubordinate, quite frankly. And I just thought,
23 okay, emotions were a little high, people were feeling
24 like all of the other divisions were all friends. And,
25 quite frankly, they had had a team at the top for years

1 together. So, of course, they were -- and we talked
2 about that in the meeting that, yes, they were more
3 stabilized than we were, and, yes, it does feel bad
4 that we have the worst numbers in the division, that we
5 got no awards for 2009.

6 I started November 30th. There was very little
7 I was going to be doing to affect that. But I
8 understood their humiliation. I mean it really was a
9 whole conference to support the winners and to make
10 everyone who wasn't a winner want to be a winner. And
11 that's okay, that's a kickoff meeting.

12 But the reality was that the people in my room,
13 all of the functional areas, felt demoralized. They
14 felt like we were the losers. And so we talked about
15 that. And I said, "Let's acknowledge that, and
16 let's --" "Let's acknowledge that, you know, we have a
17 huge challenge in front of us, and we can either get
18 depressed about it or we can look forward and say it's
19 a challenge, and that's why we're here."

20 Q. During that breakout session, what do you
21 recall -- what do you recall initially starting with
22 and speaking about to the people that were there?

23 A. I recall starting by saying, "Wasn't that a
24 great conference? What did everybody think of the
25 conference?" And there was a very mixed set of

1 reactions.

2 MR. WELCH: She's just asking what you recall,
3 not how people reacted.

4 THE WITNESS: Okay.

5 MR. WELCH: Just what you recall stating.

6 THE WITNESS: I recall that there was -- you
7 know, that I had talked about, let's talk about, you
8 know, everybody thinks this was a great conference, we
9 spent a lot of money to come to this great conference,
10 learned a lot of things. And then I said --

11 Q. BY MS. BADAWIYA: Let me interrupt you there.

12 That was your sentiment, that you thought it was
13 a great conference and that you learned a lot of
14 things?

15 A. Yes.

16 Q. And you expressed that to your people, your
17 team, correct?

18 A. Yes.

19 Q. And in response, what did they convey to you?

20 A. Some people said yes, they were very happy for
21 the opportunity to come to corporate and meet a lot of
22 people that they had never met that they had talked to
23 on the phone.

24 And that's when I particularly remember
25 Genevieve Bautista, who is the Quality Services nurse,

1 regional nurse from Region Three, almost starting to
2 cry that -- she's Hispanic, so it was a little hard to
3 completely understand her what she was saying, but
4 basically she was saying, you know, I just hate that
5 we're the losers. It's always California. They're
6 always talking about how bad California is.

7 And then she was upset because at the awards
8 night that we had gotten almost no awards, and
9 everyone, all the other divisions, had gotten all of
10 these performance awards for the 2009 year. And we had
11 gotten -- and we had gotten one award, and she stated
12 in this meeting -- and this is also in my notes -- that
13 when Chris Hyatt read that the West Division had won
14 this award, he made a joke, "Really? The West
15 Division? Are you sure?" And she took that very
16 personally.

17 And I actually brought that up to Chris when he
18 fired me, and he said, "I never said that."

19 I said, "Well, I'm just telling you what
20 Genevieve brought up in the meeting." And I said --
21 when I was trying to explain to him that yes, there was
22 morale problems here, that's why I was hired, and they
23 don't get fixed in three months.

24 And so in addition to Genevieve's comments, then
25 I remember Zenzo, the dining gentleman, the regional

1 director of dining, was sitting next to Greg Ingram,
2 the property management guy, and Zenzo was just really
3 also very negative, but more like Audrey was negative.
4 And Greg was negative about feeling like they were the
5 losers, that he's in the loser organization, and that,
6 you know, every other organization -- again, you know,
7 it came down to all of these big statuesque -- statues,
8 crystal statues were given out at the awards meeting,
9 and we didn't win any.

10 And they focus on the financial results. I mean
11 that's a big part of the conference is to show where
12 we're doing well and where we're doing crummy, and
13 California just kept coming up as the crummy. I -- I
14 understood that. I had already heard that a million
15 times. I knew we were crummy. That's why they fired
16 my predecessor and hired another person.

17 Q. Who was your predecessor?

18 A. Her name was Catherine Ratelle.

19 Q. Did you ever talk to her or meet her?

20 A. No, no.

21 Q. Ratelle?

22 A. I think it's Ratelle. I think it has an A.

23 It's very -- so, I guess, you know, I had been -- I
24 didn't have the same emotional burden because I was not
25 here for when all of that had transpired in terms all

1 of this terrible results, so.

2 Q. Did you convey that to your people?

3 A. I did. I said -- I said, "I appreciate how
4 embarrassing, humiliating this is. And so, again, we
5 can take this as an opportunity to, you know, move
6 forward and, you know, do a great job and turn this
7 around. I mean we can be a success story."

8 And, you know, it -- there were people in the
9 room that were like rah rah, and people in the room
10 that weren't.

11 Q. Do you remember who was a person who was rah rah
12 and supportive in that room?

13 A. Yeah, I would say that most of the regional
14 directors of Operations and Sales.

15 Q. Do you remember anything else you discussed
16 during that breakout meeting with your staff?

17 A. I remember Lisa Hulse was completely silent.
18 She never opened her mouth, and I gave her
19 opportunities to.

20 I also remember that when I walked into the room
21 before the meeting, when it first started, Budgie
22 Amparo who was missing from the meeting right before
23 the breakout session was in talking to Lisa. And they
24 were whispering to each other.

25 And when I walked in, Budgie got all flustered

1 and said, "Oh, we were just discussing a resident
2 issue." And then gave me a kiss and left, and I
3 thought, what, you don't have to explain it to me.

4 Q. When you say Budgie was "missing from", are you
5 talking about the breakout session?

6 A. Before the end of the conference, before we
7 broke.

8 Q. And that's on Thursday?

9 A. Yes.

10 Q. Is there anything else that you remember
11 discussing with your team during that breakout session?

12 A. That's pretty much the highlights that I
13 remember.

14 Q. With respect to your conversation with Mr. Hyatt
15 and Liberty, do you remember Liberty saying anything
16 during the termination?

17 A. Yes, she asked me if I respected HR.

18 Q. Is that what she said: Do you respect HR?

19 A. "Do you even respect HR?"

20 Q. And what did you respond?

21 A. I didn't.

22 Q. I'm sorry?

23 A. I did not respond. It was a hostile question.

24 Q. Do you remember her discussing anything else
25 with you or saying anything else to you?

1 A. She was still angry about Evan Granucci so that,
2 of course.

3 Q. What makes you believe she was still angry about
4 Evan Granucci? Did she say that to you; how did you
5 know?

6 A. Yes, because I knew that she was -- after I came
7 back from Southern California and talked to Chris, and
8 he gave me the lowdown on all of these complaints that
9 Budgie and Liberty had filed against me for -- all of a
10 sudden I went from being everyone's best friend to a
11 troubled child because I was bringing up labor
12 standards in this meeting and asking for help on
13 training.

14 And Budgie was very upset about that and went
15 back immediately that day and went in to my boss and
16 complained about it.

17 Liberty then --

18 Q. I'm sorry, Budgie complained to Chris Hyatt
19 after the February 24th meeting?

20 A. Yes.

21 Q. Okay. And you were told this by whom?

22 A. Chris Hyatt on February 25th.

23 Q. Okay. On February 25th.

24 And did Chris Hyatt tell you this in person or
25 over the phone?

1 A. On the phone.

2 Q. What specifically do you remember him telling
3 you?

4 MR. WELCH: Objection, asked and answered.

5 THE WITNESS: He told me that there were
6 complaints from the meeting that I had brought up our
7 lack of training and our executive directors' lack of
8 understanding on how to do staffing.

9 Q. BY MS. BADAWIYA: And this is the February 24th
10 meeting amongst the Emeritus people?

11 A. Yes.

12 Q. Would it be fair to say that there were two
13 meetings that day, right? There was the morning
14 meetings with all of the Emeritus folks, and then later
15 on that day there was the meeting with the Department
16 of Social Services?

17 A. Yes.

18 Q. Not everybody that attended the morning meeting
19 attended the meeting with the Department of Social
20 Services?

21 A. Correct. The only people that did not attend in
22 the afternoon were the executive directors.

23 Q. And the agenda for that meeting, for the meeting
24 with the Department of Social Services, that was put
25 together by Myron Taylor?

1 A. The initial, yes, the broad outline of topics.

2 Q. Was there more than one agenda put together for

3 that Department of Social Services meeting?

4 A. There was one formal agenda that was sent a

5 month or two in advance by Myron Taylor, but there were

6 many more things discussed in there than were

7 articulated on bullet points in the agenda.

8 Q. Okay. Yeah, but my question was a little bit

9 more specific.

10 I was wondering if there was -- in addition to

11 the agenda that Mr. Taylor sent out --

12 A. Yes.

13 Q. -- was there any other agenda for that

14 Department of Social Services meeting that you're aware

15 of?

16 A. No.

17 MR. WELCH: I object as vague. Do you mean

18 written agenda?

19 Q. BY MS. BADAWIYA: Written agenda, yes.

20 A. No.

21 Q. And the agenda that was put together for the

22 meeting with the Emeritus folks, that was an agenda

23 that you put together?

24 A. I wrote the agenda after agreement and

25 discussion with Melanie Werdel and Liberty Stansberry

1 on a conference call prior to the meeting.

2 Q. When you were in Southern California for the --
3 these meetings, you visited the Grand Terrace location,
4 which you already spoke about, correct?

5 A. That was an earlier visit. That was during my
6 second week on the job.

7 Q. Do you recall any other Emeritus locations that
8 you visited while you were in Southern California?

9 A. Yes. I visited Garden Manor -- I think it was
10 called Garden Manor. I visited Corona, and I
11 visited -- if I can see the list of the properties in
12 Region Four, I can tell you what it was. There were
13 two others.

14 Q. Sure, if there are any exhibits you want to
15 refer to, feel free to.

16 A. Let's see here. Is there a phone list someplace
17 or a region list?

18 MS. CLEMENT: Maybe that -- I can help out here.

19 THE WITNESS: To -- that's Region Three.

20 MS. CLEMENT: Okay. That's Region Three. Okay.

21 Q. BY MS. BADAWIYA: With respect to Exhibit 392
22 that was previously marked, you indicated these are
23 Region Three communities that are listed on that
24 document?

25 A. Yes.

1 Q. Did you visit any of those communities?

2 A. I did.

3 Q. Which ones?

4 A. I'm going to have a hard time remembering, but I

5 definitely went to Villa Colima; pretty sure I went to

6 Chatsworth. You know what, they all sound --

7 Q. Well, I don't want you to guess.

8 A. Yeah, they're not by geographic location always.

9 They have names that don't really stay with you.

10 But I was definitely at Villa Colima, and

11 Chatsworth was a community that had been Evan Granucci,

12 so I remember visiting that one with him. And I

13 probably visited at least two more because I spent an

14 entire, I believe, day and a half with Evan visiting

15 his communities.

16 Q. Okay. And with respect to Region One, I think

17 you already indicated that you visited with Roseville?

18 A. Yes.

19 Q. And you visited Citrus Heights?

20 A. Yes.

21 Q. Any other Region One facilities that you recall?

22 A. Oh, yes, Rancho Solano several times. Is Region

23 One in -- yes. Villa Del Rey was in Napa. Creekside I

24 think was Region Two. At least four that I recall

25 without a list in front of me.

1 Q. Okay. And you indicated that you -- you had
2 this one meeting with the Department of Social Services
3 where Myron Taylor was present?

4 A. Yes.

5 Q. Do you recall when you were with Sunrise, did
6 you attend any of these types of meetings where
7 Myron Taylor was present?

8 A. In the almost three years I was in Sunrise, we
9 never had once had an all-hands-on-deck meeting with
10 the State, and they had a lot more people then.

11 Q. Okay. So it's your testimony --

12 MR. WELCH: The State did?

13 THE WITNESS: The State did.

14 Q. BY MS. BADAWIYA: -- that while you were with
15 Sunrise, you never had any meeting with the Department
16 of Social Services?

17 A. I had personal meetings with the Department of
18 Social Services because I was the licensee of
19 buildings. But we never had a meeting where the State
20 called all of Southern California -- well, I actually
21 had Northern California, Washington. So the State
22 never had us meet with all of their licensing agents
23 and all of our team, no, never.

24 Q. Okay. In the times that you've left Sunrise and
25 while you've been a consultant to the present day, are

1 you aware of any other meetings that the State has had
2 with other providers of assisted living services other
3 than Emeritus, these type of bigger meetings --

4 A. No.

5 Q. -- that you just described?

6 MR. WELCH: Objection, vague, it calls for
7 speculation, lacks foundation.

8 Q. BY MS. BADAWIYA: Other than this meeting that
9 you had with the Department of Social Services during
10 your Emeritus tenure, were there any other meetings
11 that you recall attending with the Department of Social
12 Services?

13 A. No, I did not. Almost all of our meetings with
14 the Department of Social Services were under
15 Lisa Hulse.

16 Q. After you were terminated, did you have any
17 further discussions with any Emeritus employees?

18 A. Yes.

19 MR. WELCH: Object as vague.

20 Q. BY MS. BADAWIYA: Who did you speak with?

21 A. I called -- I actually e-mailed corporate to
22 find out if they were going to give me my final
23 paycheck any time soon.

24 I also called them to find out if I was going to
25 get any kind of information on COBRA benefits since

1 they gave nothing to me when they fired me.

2 Q. Did you get responses to those two inquiries?

3 A. I did.

4 Q. What did they tell you?

5 A. "We wired money to you."

6 Q. Did you get a wire?

7 A. Yes, days after I was fired.

8 Q. What about with respect to the COBRA benefits?

9 A. I was referred to the director of compensation,

10 and she assured me that I would get information about

11 COBRA. And then I had to proactively ask her if I

12 said -- I said, "I'm assuming I am qualified for the

13 reduced rates since I was fired." And she said she

14 would check that, and she did, and said yes.

15 Q. Any other conversations that you remember having

16 with Emeritus employees after you were fired?

17 A. Yes, I got several phone calls.

18 Q. Okay. Who did you get phone calls from?

19 A. I just got personal phone calls from people just

20 calling me to say that they were shocked, saddened.

21 Q. Do you remember any of their names?

22 A. I do, but I don't think it's something that I

23 feel comfortable sharing since I think they could be

24 negatively impacted by people at Emeritus for doing so.

25 Q. I don't -- unless your attorney is going to

1 instruct you not to answer the question, I do think I'm
2 entitled to an answer.

3 A. I refuse to answer.

4 MR. WELCH: Well, she's probably -- belated
5 objection. I don't know where the relevance of this is
6 as to a lot of these questions, especially with respect
7 to the direct examination.

8 This isn't about her lawsuit. You're entitled
9 to certainly to establish that she has a lawsuit and
10 make any suggestions or suggest any inferences you want
11 to draw from that as far as her case, but this is so
12 far afield now, and she's talking about what were
13 personal conversations, not business conversations.
14 They couldn't have been business conversations because
15 she was no longer at Emeritus. So if they're personal,
16 she has a right of confidentiality and privacy. So
17 I'll go along with her -- I'll instruct her not to
18 answer, so she doesn't have to refuse to answer.

19 MS. CLEMENT: And I'll also object on the
20 grounds that we've given a lot of leeway for you to
21 establish some kind of bias, which would be the only
22 relevance of asking the majority of these questions.
23 And I think you've gone very far afield at this point.

24 So the objection is the questions are not likely
25 to lead to the discovery of admissible evidence.

1 MS. BADAWIYA: Well, if the court reporter will
2 just mark the question.

3 Q. Did you have any discussion with any Emeritus
4 residents or family members after you were fired?

5 A. No.

6 Q. Did you have any discussions with any news or
7 media outlets after your termination regarding
8 Emeritus? And I'm including up to the present day.

9 MR. WELCH: Object as vague.

10 THE WITNESS: I did receive a call.

11 Q. BY MS. BADAWIYA: From whom?

12 A. From a Frontline investigator.

13 Q. When did you receive that call?

14 A. I think it was two or three months ago.

15 Q. When the Frontline investigator called you, did
16 they tell you how they got your contact information?

17 A. Yes.

18 Q. And what did they tell you?

19 A. They saw my lawsuit.

20 Q. Did they tell you that they had spoken to
21 Ms. Clement?

22 A. No.

23 MS. CLEMENT: Object to the question. It's not
24 relevant. None of these questions are likely to lead
25 to the discovery of admissible evidence.

1 In fact, I strongly suspect the defendant will
2 bring a motion in limine to preclude any such testimony
3 or evidence coming in at time of trial.

4 Q. BY MS. BADAWIYA: I'm sorry? You said no?

5 A. No.

6 Q. Okay. And so the --

7 Do you recall the name of the Frontline
8 investigator that reached out to you?

9 MR. WELCH: Objection, lack of relevance.

10 THE WITNESS: He had initial A.T.

11 Q. BY MS. BADAWIYA: A.J.?

12 A. A.J.

13 Q. Okay. You don't recall the name? Was it a man?

14 A. It was a man.

15 Q. Okay. And it was over the phone?

16 A. Yes.

17 Q. Do you recall how much time you spent talking to
18 him?

19 A. I referred him to my attorney.

20 Q. So you didn't have any substantive conversation
21 with him?

22 A. No, I referred him to my attorney, and my
23 attorney spoke with him.

24 Q. Okay. So when the investigator called you, he
25 said: I am in receipt of the complaint and summons you

1 filed against Emeritus, and I want to ask you questions
2 about that; is that a fair characterization of what he
3 said?

4 A. Yeah, he told me he was doing a story about the
5 industry, and he knew that I was a person who had
6 worked in the industry, and that I had some concerns
7 about my termination, and that he wondered if I would
8 be willing to be on camera and to talk about my
9 experience, and I referred him to my attorney.

10 Q. When you say he was doing a story about the
11 industry, are you talking about -- was it that
12 generality that he's doing a story about the assisted
13 living industry, or did you have the impression that
14 he's doing specifically a story about Emeritus?

15 MR. WELCH: Objection, it calls for speculation,
16 asked and answered. She said what he told her. She
17 can't speculate about what he was intending to infer.

18 THE WITNESS: He said assisted living industry.

19 Q. BY MS. BADAWIYA: But he did share with you that
20 he was in receipt of the lawsuit that you filed against
21 Emeritus?

22 A. He didn't say receipt. He said he was aware of.

23 Q. After your termination with Emeritus, did you
24 make any complaints to any governmental agency about
25 Emeritus?

1 MR. WELCH: Objection, lack of relevance.

2 THE WITNESS: I believe my attorney did on my
3 behalf. I believe that there was an EEOC suit probably
4 filed, but it was two years ago. I don't...

5 Q. BY MS. BADAWIYA: My question was a little bit
6 more specific. What I'm wondering --

7 MS. CLEMENT: Not really.

8 Q. BY MS. BADAWIYA: -- after your termination did
9 you reach out, let's say, for instance, to the
10 Department of Social Services and make any complaints
11 to them about Emeritus?

12 A. No.

13 Q. While you were employed with Emeritus, did you
14 reach out to the Department of Social Services and make
15 any complaints about Emeritus?

16 A. No.

17 MR. WELCH: I'm going to object as vague.
18 Depends on how you characterize the meeting with Social
19 Services.

20 THE WITNESS: I did not.

21 MS. BADAWIYA: That's A good question, counsel.

22 Q. When you were meeting with the Department of
23 Social Services and Myron Taylor, did you express any
24 complaints about Emeritus to Mr. Taylor?

25 A. No.

1 MR. WELCH: Object as vague.

2 Q. BY MS. BADAWIYA: Okay. At this February 24th

3 meeting, you had been with the company then for

4 approximately two-and-a-half months, correct?

5 A. Yes.

6 Q. And you had visited a number of communities by

7 then, correct?

8 A. Correct.

9 Q. And you were having, as you've described it

10 earlier, problems determining how the acuity was

11 factored in to the staffing, correct?

12 A. Correct.

13 Q. Did you express any of those concerns to

14 Mr. Taylor during your meeting?

15 A. Absolutely not.

16 Q. Okay. Prior to you coming to work for

17 Emeritus -- if I use the term "mandated reporter", do

18 you understand what I mean? Do you understand what I

19 understand --

20 A. A mandated reporter like in an abuse case?

21 Q. Yes.

22 Do you know what that means?

23 A. If I am witness to an abuse or if I'm witness

24 to -- whether it's a child abuse or adult abuse, that

25 people in certain positions must report.

1 Q. And it especially holds true for people that
2 work with the elderly, correct?

3 A. Sure.

4 MR. WELCH: Object, it calls for a legal
5 conclusion.

6 Q. BY MS. BADAWIYA: You said you became a licensee
7 in California?

8 A. For Sunrise.

9 Q. For Sunrise, that's right.
10 Did you become an RCFE administrator?

11 A. No.

12 Q. You, I believe, testified earlier that you
13 became familiar with Title 22 in California, correct?

14 A. Yes.

15 Q. Okay. And if you're familiar with Title 22, you
16 understand that there are certain code provisions about
17 elder abuse and what that encompasses. Do you
18 understand that?

19 A. Sure.

20 MR. WELCH: Objection, vague, calls for a legal
21 conclusion.

22 MS. CLEMENT: Also object it misstates the law.
23 Elder abuse statutes are in the Welfare and Institution
24 Code and in the Penal Code, not in Title 22.

25 Q. BY MS. BADAWIYA: By the time you met with

1 Mr. Taylor in February of 2009, had you formed any
2 impressions that Emeritus had violated any regulatory
3 provisions in California?

4 MR. WELCH: Object, it calls for a legal
5 conclusion, calls for speculation.

6 MS. CLEMENT: Also misstates testimony.

7 THE WITNESS: Had violated?

8 Q. BY MS. BADAWIYA: Yes.

9 A. No.

10 Q. You described a meeting with the Roseville
11 employees. What did you call that meeting? I'm sorry.

12 A. They're called employee commitment meetings.

13 Q. Okay. And those meetings have confidentiality
14 to it so the employees can speak freely?

15 A. Yes.

16 Q. Okay. And during those meetings they shared
17 with you concerns that they had about that community,
18 correct?

19 A. Shared with Audrey and with me, yes.

20 Q. Okay. And did you do anything to investigate
21 the concerns that the employees shared with you about
22 that Roseville community?

23 A. Yes, we did.

24 Q. What did you do specifically?

25 A. Actually, most of the investigation was done by

1 Audrey. And as a result of that meeting, I met with
2 the regional director, Mary Winters, and we terminated
3 the executive director.

4 Q. And do you recall who the executive director
5 was?

6 A. I do not. She had been with us a very short
7 time.

8 Q. Was this the executive director that that
9 referral agency had criticized, Masters I think you
10 were saying?

11 A. He didn't criticize the executive director. He
12 criticized the community over a long period of
13 experience with it.

14 Q. I see, okay.

15 And she was the executive director of that
16 Roseville community?

17 A. They had had numerous, rotating door, and a lot
18 of times when they had nobody in that community. And
19 the person who was in charge was the business
20 operations manager who was in that community half time
21 and happened to have an RCFE license. So they put her
22 license on the door, so to speak, in between times when
23 they were looking for a full-time person.

24 Q. Okay. So with respect to the concerns that the
25 employees raised to you during that Roseville meeting,

1 you had Audrey Withers investigate on your behalf,
2 would that be accurate, or did she just do the
3 investigation herself as the HR person?

4 A. She did the investigation as the HR person
5 related to a number of the issues that were raised,
6 yes.

7 Q. Okay. And she came back to you with her
8 findings?

9 A. She wrote a report on the findings. She wrote a
10 summary on the meeting.

11 Q. And then I believe you told me you shared --
12 that was shared with Mary Winters?

13 A. It definitely would be shared with Mary Winters,
14 yes.

15 Q. And who was Mary Winters?

16 A. Mary was the interim regional director of
17 Operations for Region One.

18 Q. Okay. And after that information was shared
19 with her, then the executive director was fired?

20 A. Yes. She had already had trouble with the
21 executive director, so this was just additional
22 documentation of challenges that she was having.

23 Q. Did you ever ask to open an office in Northern
24 California?

25 A. Was told -- I was actually instructed to open

1 one.

2 Q. I'm sorry. You were instructed to open?

3 A. I was instructed that that would be an
4 opportunity for me to do that, yes.

5 Q. Who instructed you to do that?

6 A. Chris Hyatt asked me if I -- he suggested that
7 it would be a good thing to have a Northern California
8 regional office, and instructed me to work with Eric
9 Mendelsohn's organization to find a broker to help us
10 find something.

11 Q. Did you start that process?

12 A. Yes.

13 Q. Did you find --

14 Did you find an office space?

15 A. I spoke with Eric about it at the dinner, the
16 night before I was fired.

17 Q. So is that as far as it got?

18 A. As far as I know.

19 Q. Okay. Did you ever specifically look into and
20 find a location, though?

21 A. No. I suggested a few different towns because I
22 was trying to triangulate between where different
23 people lived.

24 Q. Do you recall what towns you suggested?

25 A. I think that San Francisco was out. It was too

1 expensive. And I think that they were all in Marin,
2 and it was Eric Mendelsohn who said to me, "get an
3 office right next to where you live."

4 Q. You live in Marin, right?

5 A. Yes.

6 Q. Is it actually Marin or Sausalito?

7 A. Marin is the county.

8 Q. Okay.

9 A. This is Sausalito.

10 Q. Got you.

11 A. May I ask for some water?

12 MS. CLEMENT: Erik, can you get her some water,
13 please?

14 MS. BADAWIYA: Actually, why don't we take a
15 break?

16 THE VIDEOGRAPHER: This ends tape number four of
17 today's deposition. We're going off the record at
18 5:32 p.m.

19 (Break taken in proceedings.)

20 THE VIDEOGRAPHER: We are on the record at
21 5:36 p.m. The date is August 29th, 2012. This begins
22 tape number five of the deposition of Susan Rotella.

23 Q. BY MS. BADAWIYA: Okay. We're going to -- we
24 talked about this off the record, so we're going to try
25 to plug along and finish it up.

1 I understand you're going out of the country
2 September 10th?

3 A. Yes.

4 Q. How long will you be gone?

5 A. I will be gone for about ten days, and then when
6 I come back, I will be packing to move October 12th.

7 Q. To Colorado?

8 A. Oregon.

9 Q. Oregon, all right. My notes are scattered all
10 over the place, so bear with me.

11 I understand from some of the exhibits that
12 we've marked is that Exhibit No. 394 and Exhibit 395
13 are documents you brought to the deposition. Do you
14 have those? This is 395, and then I think in front of
15 you is 394.

16 A. Yes, I gave these to the attorneys, yes.

17 Q. Okay. When you say you gave these to the
18 attorneys, are you talking about during yesterday's
19 meeting --

20 A. Yes.

21 Q. -- you provided Ms. Clement and Mr. Welch with
22 these documents?

23 A. Yes.

24 Q. And these documents were documents that you
25 gathered during the course of your employment with

1 Emeritus?

2 A. Yes.

3 Q. Okay. Do these documents represent the entirety
4 of the documents that you had in your possession while
5 you were employed at Emeritus?

6 A. No.

7 Q. Okay. What other documents do you have in your
8 possession?

9 A. I have a number of binders that -- things that
10 were given to me just as an employee that since I
11 worked in a home office, that's where they were
12 delivered to.

13 Q. And you still have those binders?

14 A. Yes.

15 Q. And do you --

16 Can you describe for us what those binders
17 contain?

18 A. Some like safety binders, training binders on
19 how to reduce Workers' Comp, probably some
20 financials -- every month they sent me financials.

21 Q. Is there a reason why you didn't make those
22 documents available to Ms. Clement?

23 A. Brought them all down, and that's why we met at
24 my house because I didn't want to haul all of that
25 stuff, so I just brought them out, and I --

1 Q. And she took basically what she needed?

2 MS. CLEMENT: She doesn't know what --

3 MR. WELCH: I object, that calls for

4 speculation.

5 MS. CLEMENT: You're assuming that she

6 understood my frame of mind.

7 Q. BY MS. BADAWIYA: So basically you produced a

8 number of documents. And of the documents you

9 produced, Exhibit 394 and 395 is what we have present

10 today?

11 A. I think all of these that were there yesterday,

12 and I don't know how to answer that, other than these

13 were copied from what I --

14 Q. Produced yesterday?

15 A. -- surrendered, yes.

16 Q. But there were other documents that were not

17 here that you have in your possession, correct?

18 A. Yes, there's a few binders.

19 Q. Document 393 is your personnel file?

20 A. Yes.

21 Q. You had a chance to go through it --

22 A. I did.

23 Q. -- correct?

24 And there are some documents that have your

25 signature on it? For instance -- there's a document

1 entitled, "Medicaid False Claims Reporting." Do you
2 see that?

3 A. Yes, I know what that is.

4 Q. Can you just quickly skim through all of the
5 documents and just verify for us that that is, in fact,
6 your signature on the documents contained in that
7 exhibit?

8 MS. CLEMENT: Object on the grounds of
9 relevance, not likely to lead to the discovery of
10 admissible evidence in this action.

11 THE WITNESS: Yes.

12 Q. BY MS. BADAWIYA: What was your initial
13 impression of Emeritus when you were interviewing with
14 the company?

15 MR. WELCH: Objection, vague.

16 THE WITNESS: Could you tell me which time?

17 Q. BY MS. BADAWIYA: When you were interviewing with
18 the company in October and November?

19 A. In-person interview?

20 Q. Yes.

21 A. My immediate impression was, of course, I was
22 comparing it to my only other experience at Sunrise in
23 that industry and a very similar, was how incredibly
24 robust they were in finance and IT, because that was
25 not one of Sunrise's traits. It's one of my most

1 immediate -- I had never seen so many finance people in
2 my life.

3 Q. Had you done any independent research about
4 Emeritus' finances, as you described them, prior to
5 signing up with Emeritus as an employee?

6 A. No.

7 Q. When you say their IT was robust, what are you
8 talking about?

9 A. Almost each person that I met with talked about
10 a software application that they currently were using
11 an external vendor for that they were now building
12 proprietary systems in-house. And I was surprised
13 because senior living companies are not particularly
14 known for their IT backgrounds. And being a person who
15 came from the tech industry, I was -- was, you know, it
16 was something that stuck out to me.

17 Q. Is it fair to say that one of the reasons that
18 Emeritus hired you was based on your experience with
19 Sunrise and your knowledge of the industry?

20 MR. WELCH: Object, that calls for speculation
21 as to what their motives were.

22 THE WITNESS: I could tell you that from a
23 conversation I had with Chris Hyatt, when I told him
24 that when I went to Sunrise, I had had no prior
25 experience in healthcare and that I was -- you know, I

1 was fully trained by my senior vice-president, he said,
2 "I never would have hired anybody who didn't come from
3 the industry." So I think that, yes, my background was
4 probably relevant to him.

5 Q. BY MS. BADAWIYA: And it's fair to say that you,
6 yourself, when you wrote to Mr. Hyatt I believe -- or
7 when you wrote Emeritus and you presented your resume,
8 you certainly -- in that October '09 letter, you
9 certainly referenced your experience with Sunrise,
10 correct?

11 A. Of course.

12 Q. Prior to going to work for Emeritus, what was
13 your understanding about the services that it provided
14 to its senior residents?

15 A. I knew from speaking with Joel Goldman, as I
16 mentioned earlier, at Hanson Bridgett I knew that they
17 were very similar in the types of communities that they
18 ran, that they provided assisted living and memory care
19 primarily.

20 MS. BADAWIYA: Going through my notes, and I'm
21 trying to eliminate what we can just eliminate and not
22 ask you about.

23 THE WITNESS: I appreciate the break.

24 (Discussion held off the record.)

25 Q. BY MS. BADAWIYA: You indicated that you spent a

1 week up in Seattle after you were hired getting
2 oriented?

3 MR. WELCH: Objection, misstates testimony.

4 THE WITNESS: My first official week on the job
5 was in Seattle in orientation, yes.

6 Q. BY MS. BADAWIYA: I think you said every
7 45 minutes somebody new would come in and give you a
8 presentation about what they did?

9 A. Yes.

10 Q. What impression did you have after that week
11 meeting all of the different folks at Emeritus about
12 the company?

13 MR. WELCH: Object as vague.

14 THE WITNESS: But I can answer it? Is that what
15 that means?

16 MS. BADAWIYA: Unless he says, "Don't answer the
17 question" you are to answer.

18 MS. CLEMENT: Or you don't understand it.

19 MR. WELCH: I can't tell you if you can or not.
20 I'm just saying I believe it's vague.

21 THE WITNESS: My impression was that there was a
22 robust corporate office of resources, and that they had
23 an extraordinarily large number of policies and
24 procedures and people in finance and IT. That was a
25 big part of my week up there.

1 And also that they had -- that they had a pretty
2 robust group of marketing people. Another thing this
3 industry is not known for is social networking, being
4 branding, aggressive collateral materials. By
5 "aggressive", I mean very professionally developed, and
6 so I was -- I was impressed with Jayne when I met her
7 and her knowledge of, grasp of both branding and
8 marketing, since I had spent quite a bit of my career
9 doing that in technology and to a lesser extent senior
10 living but certainly technology.

11 Q. BY MS. BADAWIYA: Did you form an impression that
12 there was a lot of resources at your disposal to help
13 you get your job done as vice-president of Operations?

14 MR. WELCH: Object, vague, lacks foundation.

15 THE WITNESS: Yes.

16 Q. BY MS. BADAWIYA: There was something I wanted to
17 go back to since you said you studied Title 22, and I'm
18 paraphrasing --

19 A. Yes.

20 Q. -- what you had said earlier.

21 Is it your understanding that Title 22 does not
22 require assisted living communities to have a licensed
23 nurse on duty?

24 MR. WELCH: Object as vague, calls for a legal
25 conclusion.

1 Q. BY MS. BADAWIYA: If you know.

2 A. It is my understanding it's not required for a
3 RCFE to have a nurse.

4 Q. That was my question. Thank you.

5 MS. CLEMENT: Well, did she have more to add?

6 THE WITNESS: But it depends on what the
7 services are they offer in there. So if a RCFE chooses
8 to offer certain types of medication management, then,
9 yes, you must have a nurse.

10 Q. BY MS. BADAWIYA: And you must have a nurse
11 pursuant to Title 22; is that your understanding?

12 A. You know, I don't -- I don't recall if that's
13 written in Title 22, but I certainly know that in
14 Title 22 there were things that we could do and could
15 not do. And if you had a nurse, there were certain
16 things that we could do.

17 Q. Okay. And it's your best estimate that that's
18 something encompassed in Title 22?

19 A. I would not say that I recall -- I haven't
20 worked in Title 22 -- I haven't read it in probably
21 four years. So I can't tell you what the -- you know,
22 which regulatory document I would have read that in.

23 Q. Okay. You spoke earlier about you created --
24 you had 45 communities, I believe is what you said, and
25 you created a spreadsheet, and it had key job titles

1 and how to keep track of people. Do you remember that
2 testimony?

3 A. Sure, yes.

4 Q. Do you have those spreadsheets?

5 A. I do not, but I'm sure that Audrey or anyone who
6 was at that meeting, because I believe I sent it out
7 after the meeting. I actually did try to find it, but
8 I...

9 Q. You couldn't find it?

10 A. No.

11 Q. Okay. When you say you sent it out, do you mean
12 in an e-mail that you sent it out?

13 A. After the meeting, I shared it with all of the
14 people that contributed to it because we wanted to use
15 that going forward in meetings to make sure that we
16 were filling it out and filling the vacancies and that
17 we were upgrading people that were a C to a B, and
18 people that were Fs were being moved on. So, yes, it
19 was -- it was a document that I shared, certainly went
20 to Audrey Withers. And from that she would use that as
21 the basis of creating that weekly report on what are
22 open management positions that she sent to all of us.

23 Q. You indicated that you implemented a referral
24 bonus for staff at the communities to get up to \$1,000
25 if they referred a friend or colleague to work?

1 A. I did that with HR, yes, with
2 Liberty Stansberry's group.

3 Q. Okay. And that referral fee was paid if their
4 friend or colleague actually started working at
5 Emeritus?

6 A. And stayed for a certain number of months and
7 had satisfactory performance.

8 Q. Okay.

9 A. It's fairly standard kind of practice.

10 MS. BADAWIYA: We're almost done.

11 That's all I have at this time.

12 THE VIDEOGRAPHER: This ends --

13 MS. CLEMENT: No, no. Don't go off the record.
14 I have three questions.

15 FURTHER EXAMINATION BY MS. CLEMENT

16 Q. One, is it your understanding that the standard
17 in California for assisted living, that the facility
18 personnel shall at all times be sufficient in number to
19 meet the needs of the residents?

20 A. I'm sorry, could you repeat that? Sorry.

21 Q. Yes.

22 Is it your understanding that the California
23 standard for assisted living is that each facility
24 shall have sufficient staff in numbers to meet the
25 needs of the residents?

1 MS. BADAWIYA: Calls for a legal conclusion.

2 THE WITNESS: That's why we submit a plan of
3 operation when we license a facility with DSS.

4 Q. BY MS. CLEMENT: And is it your understanding
5 when you were the vice-president of Operations for
6 Emeritus, that whenever Emeritus chose to accept a
7 resident for care, they were obligated to provide all
8 the care that resident needed?

9 A. Can you say that again?

10 Q. Yes.

11 Was it your understanding when you were the
12 vice-president of Operations for Emeritus that when
13 Emeritus accepted a resident for care, they were
14 responsible for meeting that resident's needs?

15 MS. BADAWIYA: It's vague, it calls for a legal
16 conclusion.

17 THE WITNESS: They were responsible for -- for
18 the services that they -- the resident contracted for,
19 and there would be some services that might be brought
20 in from the outside that, say, physical therapy or
21 things that Emeritus wouldn't be responsible for, that
22 would have been paid for by another source. But to the
23 extent that --

24 Are you asking me specifically about assisted
25 living services or are you --

1 Q. BY MS. CLEMENT: I'm ask you this:

2 Is it correct that Emeritus never had to accept
3 any particular resident for care?

4 A. Oh, yes, yes.

5 Q. However, once they did accept them for care,
6 they were required to meet that resident's needs?

7 MS. BADAWIYA: Vague, calls for a legal
8 conclusion.

9 THE WITNESS: Yes.

10 Q. BY MS. CLEMENT: And that was either by
11 providing the services through their own employees or
12 bringing in outside services?

13 A. Or working with the family to work with
14 physicians and pharmacists, yes.

15 Q. And just one last question, and that's regarding
16 Vigilant.

17 When you were at Emeritus, was Vigilant the
18 program that Emeritus was using as its assessment tool?

19 A. Yes, and that was one of the systems that they
20 were building their own proprietary system.

21 Q. And was it your understanding at Emeritus that
22 Vigilant, that software program, actually had a labor
23 piece to it which would tell Emeritus how much staff
24 they would need on a daily basis based on the care
25 needs of the residents?

1 MS. BADAWIYA: Calls for speculation, lacks
2 foundation.

3 THE WITNESS: Yes, I work with Vigilant today,
4 and it's -- it's an end-to-end assessment care planning
5 and billing system. So it would -- you would do
6 assessments in there. It would convert those
7 assessments into care plans. And there would be --

8 There's a billing aspect of Vigilant where it
9 would take the time for the -- time that was spent on
10 different care that the family was going to get from
11 the community and convert that into points. Then we,
12 as providers, would put in the translation from points
13 to billing, you know, what each point was worth in
14 terms of dollar of revenue, and that would convert into
15 what the -- what the billing would be for that
16 resident.

17 And then there's another whole part of the
18 Vigilant system that takes the care in the care plan and
19 converts that into what is the time that it would take
20 to deliver that care. And then when you add up all of
21 the care for all of the residents that you're
22 providing, that provides the level of staffing that you
23 need to have in hours.

24 Q. BY MS. CLEMENT: And did Emeritus utilize that
25 labor piece of Vigilant when you were there in order to

1 assist their executive directors in staffing the
2 facilities?

3 A. No, if they used that part of the labor system,
4 I won't have had the question.

5 I understood they didn't use -- we used at
6 Symphony, sorry, at Sunrise a very basic tool that the
7 supervisors had to calculate the amount of hours per
8 resident that they needed to provide in their staffing
9 schedule. And I understood that they didn't have that
10 and didn't use that at Emeritus.

11 And I also understood that they used Vigilant to
12 come up with the points, to come up with the revenue
13 that came onto the line item level of care on the
14 income statement, and yet we didn't use the part that
15 was for labor.

16 MS. CLEMENT: Thank you.

17 No further questions.

18 THE VIDEOGRAPHER: This ends tape number five of
19 the deposition of Susan Rotella. We're going off the
20 record at 6:04 p.m.

21 (Deposition concluded at 6:04 p.m.)

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[illegible]

Pursuant to Section 2025(q)(1) of the Code of Civil Procedure of the State of California, I hereby certify that I have read my deposition transcript, made those changes and corrections that I deem necessary, and approve the same as now true and correct.

Date: _____ Signature: _____

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August 31st, 2012

Ref. No. 12199 CLK

SUSAN ROTELLA
c/o Attorney Michael Welch
Law Offices of Michael Welch
Four Embarcadero Center, 39th Floor
San Francisco, CA 94111

Re: Boice v. Emeritus
Deposition taken on August 27, 2012

Dear Ms. Rotella:

Your deposition transcript is now available for your signature. You may wish to discuss with your attorney whether he/she requires that it be read, corrected and signed before it is filed.

If you wish to read your transcript, please call our office between the hours of 9:00 a.m. and 4:00 p.m. to schedule an appointment. Your transcript will be available for corrections until October 5, 2012, at which time the original of your transcript will be forwarded to the noticing party, Ms. Clement.

It is our policy not to release the original transcript from our office.

Respectfully,

CHERYL L. KYLE,
CSR No. 7014

cc: All attorneys present at time of proceeding.

It is not necessary to contact this office if you DO NOT wish to read your transcript.

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